

EXHIBIT B

ANDREW W. STUMPF
COHEN vs JAFFE

February 09, 2017

1-4

Page 1		Page 3	
1	UNITED STATES DISTRICT COURT	1	TABLE OF CONTENTS
2	EASTERN DISTRICT OF MICHIGAN	2	
3		3	WITNESS
4	NEAL COHEN, DARREN CHAFFEE,)	4	Andrew W. Stumpff
5	and SSL ASSETS, LLC,)	5	
6	Plaintiffs,)	6	EXAMINATION
7	vs.)	7	By Mr. Hengeveld.....Page 5
8	JAFFE, RAITT, HEUER & WEISS, P.C.,)	8	
9	JEFFREY M. WEISS, LEE B. KELLERT)	9	
10	and DEBORAH L. BAUGHMAN,)	10	
11	Defendants,)	11	
12	JAFFE, RAITT, HEUER & WEISS, P.C.)	12	
13	Third Party Plaintiff,)	13	
14	vs.)	14	
15	COBE CAPITAL, LLC,)	15	
16	Third Party Defendant.)	16	
17	THE DEPOSITION OF ANDREW W. STUMPF	17	
18	DEPONENT: Andrew W. Stumpff	18	
19	DATE: Thursday, February 9, 2017	19	
20	TIME: 8:02 a.m.	20	
21	LOCATION: Plunkett Cooney	21	
22	150 West Jefferson, Suite 800	22	
23	Detroit, Michigan 48226	23	
24	REPORTER: Kelli A. Murphy, CSR-7768, B.S.	24	
25		25	
Page 2		Page 4	
1	APPEARANCES:	1	EXHIBITS
2		2	
3	JEFFREY J. GOULDER, ESQ. (AZ010258)	3	STUMPF
4	Stinson Leonard Street LLP	4	Deposition
5	1850 North Central Avenue, Suite 2100	5	Exhibit
6	Phoenix, Arizona 85004-4584	6	Description
7	602.279.1600	7	Page
8	jeffrey.goulder@stinson.com	8	Marked
9	Appearing on behalf of Plaintiffs.	9	=====
10		10	Exhibit 55
11	JEFFREY S. HENGEVELD, ESQ. (P66029)	11	07/05/16 Letter/Attachment
12	Plunkett Cooney	12	(P0037273-37279)
13	38505 Woodward Avenue, Suite 2000	13	
14	Bloomfield Hills, Michigan 48304	14	Exhibit 56
15	248.594.8202	15	Multi-Page Document
16	jhengeveld@plunkettcooney.com	16	
17	Appearing on behalf of Defendants.	17	Exhibit 57
18		18	Expert Report of
19		19	Jordan Schreier
20		20	
21		21	
22		22	
23		23	
24		24	
25		25	

ANDREW W. STUMPPFF
COHEN vs JAFFE

February 09, 2017
5-8

<p style="text-align: right;">Page 5</p> <p>1 Detroit, Michigan</p> <p>2 Thursday, February 9, 2017</p> <p>3 About 8:02 a.m.</p> <p>4</p> <p>5 * * * *</p> <p>6 THE REPORTER: Raise your right hand, please.</p> <p>7 MR. STUMPPFF: (Witness complies.)</p> <p>8 THE REPORTER: Do you swear or affirm the</p> <p>9 testimony you're about to give is the truth, the whole</p> <p>10 truth, and nothing but the truth?</p> <p>11 MR. STUMPPFF: I do.</p> <p>12 THE REPORTER: Thank you.</p> <p>13 EXAMINATION</p> <p>14 BY MR. HENGVELD:</p> <p>15 Q Can you please state your full name?</p> <p>16 A Sure. Andrew Wayne Stumpff.</p> <p>17 Q Mr. Stumpff, my name is Jeff Hengeveld, and I represent</p> <p>18 the defendants in this case. Have you given a</p> <p>19 deposition before?</p> <p>20 A Yes, I have.</p> <p>21 Q How many times have you been deposed?</p> <p>22 A Just once.</p> <p>23 Q Okay. In what case was that deposition given?</p> <p>24 A The -- I can't remember the full name of the case, but</p> <p>25 it was a case in which I was an expert, and the</p>	<p style="text-align: right;">Page 7</p> <p>1 purchase agreement.</p> <p>2 Q All right. Did that have anything to do with controlled</p> <p>3 group liability?</p> <p>4 A No. It didn't have anything to do with controlled group</p> <p>5 liability. There's a tangential relation between the</p> <p>6 ideas of controlled group liability, and what was at</p> <p>7 issue there, because, as I recall, this question went to</p> <p>8 past service, and -- under the definition of a plan --</p> <p>9 it was serviced with your, quote, employer.</p> <p>10 And part of the issue was around ambiguity and</p> <p>11 vagueness around the definition of "employer," and that,</p> <p>12 I think, included a controlled group concept, at the</p> <p>13 time, but it wasn't really central to the case.</p> <p>14 Q What specific issue were you retained to give opinions</p> <p>15 about in that case?</p> <p>16 A Whether the language in the transaction agreement</p> <p>17 required that the employees -- who became employees of</p> <p>18 the acquiror -- were entitled to receive past service</p> <p>19 credit for the acquiror's pension plan for their service</p> <p>20 prior to the acquisition.</p> <p>21 Q Were you engaged to critique the drafting of that</p> <p>22 language by -- sorry, strike that.</p> <p>23 Were you engaged to critique the attorney's</p> <p>24 drafting of that language, or were you engaged to opine</p> <p>25 on the language, itself?</p>
<p style="text-align: right;">Page 6</p> <p>1 defendant's party's name was Liberty Insurance.</p> <p>2 Q Okay. And that's the Moyle versus --</p> <p>3 A Yes.</p> <p>4 Q -- Liberty case?</p> <p>5 A Yes.</p> <p>6 Q When did you give that deposition?</p> <p>7 A I'm going to guess four years ago, roughly.</p> <p>8 Q And that case is currently pending?</p> <p>9 A No. It was decided on summary judgment, again, probably</p> <p>10 three or four years ago.</p> <p>11 Q Okay. Was that the only case in which you've previously</p> <p>12 served as an expert?</p> <p>13 A Yes. I've been consulted as a potential expert in other</p> <p>14 cases, but that's the only case I think that I've ever</p> <p>15 been retained as an expert, actually retained.</p> <p>16 Q Can you tell me what that Moyle versus Liberty case was</p> <p>17 about?</p> <p>18 A Yes. That also involved a merger acquisition context,</p> <p>19 and I was an expert for the plaintiffs, and the issue</p> <p>20 had to do with whether past service credit should be</p> <p>21 granted to employees of the company that was acquired,</p> <p>22 and the acquiror's plans for service prior to the</p> <p>23 acquisition.</p> <p>24 And it was a question of the drafting of the</p> <p>25 transaction document, which, I believe, was a stock</p>	<p style="text-align: right;">Page 8</p> <p>1 A Um, I think that there was an element of both, as I</p> <p>2 recall. You'll have to forgive me. I, perhaps, should</p> <p>3 have reviewed that.</p> <p>4 But my recollection is that there were</p> <p>5 elements of both, and that part of the issue was that</p> <p>6 there was a, sort of, a typical standard for drafting</p> <p>7 provisions relating to providing service, and this</p> <p>8 departed from that.</p> <p>9 And that, based on that departure, the</p> <p>10 language should be read to provide past service. That's</p> <p>11 my best recollection of what it was.</p> <p>12 Q There were no claims against a lawyer --</p> <p>13 A No.</p> <p>14 Q -- in that case?</p> <p>15 Aside from sitting for a deposition in that</p> <p>16 case, did you have any other involvement?</p> <p>17 A Sitting for a deposition, and then, I think, at some</p> <p>18 point, I, sort of, discussed the case with the lawyers,</p> <p>19 and that's it. There was nothing further. I did not do</p> <p>20 a report. The case did not go to trial.</p> <p>21 Q Again, the case was dismissed by summary disposition --</p> <p>22 A Yes.</p> <p>23 Q -- to the best of your recollection?</p> <p>24 A Yes.</p> <p>25 Q Did you say that you have served in some consulting role</p>

ANDREW W. STUMPPFF
COHEN vs JAFFE

February 09, 2017
9-12

<p style="text-align: right;">Page 9</p> <p>1 as an expert?</p> <p>2 A No. What I meant to say is I was consulted about the</p> <p>3 possibility of being an expert several other times, but</p> <p>4 I never -- other than that case -- proceeded to be</p> <p>5 retained as an expert.</p> <p>6 Q Okay. When were you first retained by the Stinson law</p> <p>7 firm, in this case?</p> <p>8 A Well, to the best of my recollection, it was late spring</p> <p>9 of last year, or, perhaps, early summer. I'd say</p> <p>10 sometime between April and June, but that's just to the</p> <p>11 best of my recollection.</p> <p>12 MR. HENGVELD: I'm handing you what I've</p> <p>13 marked as Exhibit No. 55.</p> <p>14 (Marked for identification:</p> <p>15 Deposition Exhibit No. 55.)</p> <p>16 THE WITNESS: Sure. (Witness reviewing</p> <p>17 document.)</p> <p>18 BY MR. HENGVELD:</p> <p>19 Q Exhibit 55 is a series of documents that include -- on</p> <p>20 the first two pages -- a letter to you, from</p> <p>21 Jeff Goulder, on July 5, 2016.</p> <p>22 A Um-hmm.</p> <p>23 Q It looks like it's an engagement letter.</p> <p>24 Is that what it looks like to you?</p> <p>25 A Yes, it does.</p>	<p style="text-align: right;">Page 11</p> <p>1 think Stinson got a recommendation of our firm,</p> <p>2 generally -- and possibly including my name, but</p> <p>3 possibly including other names -- from a lawyer in</p> <p>4 Kansas City, and then, ultimately, sort of, narrowed in</p> <p>5 on me.</p> <p>6 MR. GOULDER: Let's go off the record for just</p> <p>7 one second.</p> <p>8 MR. HENGVELD: Okay.</p> <p>9 MR. GOULDER: Let me just step out with</p> <p>10 Andrew.</p> <p>11 MR. HENGVELD: Sure.</p> <p>12 (Momentarily off the record.)</p> <p>13 BY MR. HENGVELD:</p> <p>14 Q How many telephone conversations did you have with</p> <p>15 Jeff Goulder, or anyone else from the Stinson law firm,</p> <p>16 prior to July of 2016?</p> <p>17 A I'm going to guess two.</p> <p>18 Q Do you know how long those telephone conversations</p> <p>19 lasted?</p> <p>20 A About 15 to 30 minutes. I'm guessing.</p> <p>21 Q Each?</p> <p>22 A Yeah.</p> <p>23 Q Did you agree to serve as an expert after the first</p> <p>24 telephone conversation?</p> <p>25 A I don't remember. My recollection is likely not.</p>
<p style="text-align: right;">Page 10</p> <p>1 Q Were you contacted by either Jeff Goulder, or another</p> <p>2 member of the Stinson law firm, prior to July of 2016?</p> <p>3 A Yes. This would have been after several conversations,</p> <p>4 conflict checks, and so forth.</p> <p>5 Q And so you think you were first contacted in early</p> <p>6 spring of 2016?</p> <p>7 A No, not -- not early spring. As I said, sometime</p> <p>8 between probably April and June, to the best of my</p> <p>9 recollection. If I check my records, I could give you a</p> <p>10 better sense, but that's my best recollection.</p> <p>11 Q And what records would you have to check to determine</p> <p>12 that?</p> <p>13 A E-mails, internal e-mails.</p> <p>14 Q Did you know Jeff Goulder before --</p> <p>15 A No.</p> <p>16 Q -- he reached out to retain you?</p> <p>17 A No.</p> <p>18 Q Did you know anyone at the Stinson law firm, prior to</p> <p>19 being retained, in this case, as an expert?</p> <p>20 A I did. I know one of their former partners fairly well,</p> <p>21 a man named Tom Brous. I knew him for many years.</p> <p>22 Q Did Tom Brous reach out to you, at all, regarding this</p> <p>23 case?</p> <p>24 A No. I'm not entirely certain how Stinson came to us.</p> <p>25 My recollection is that Stinson first contacted -- I</p>	<p style="text-align: right;">Page 12</p> <p>1 Q Okay. Why not?</p> <p>2 A After the first conversation, I can't really accept any</p> <p>3 representation, of any sort, without checking internally</p> <p>4 for various things.</p> <p>5 Q Notably a conflict check?</p> <p>6 A Notably, yes.</p> <p>7 Q Did you form any conclusions about Jaffe, Raitt's -- or</p> <p>8 the lawyer at Jaffe, Raitt's actions after that first</p> <p>9 telephone conversation?</p> <p>10 MR. GOULDER: At any time after, including</p> <p>11 through today?</p> <p>12 THE WITNESS: Um-hmm.</p> <p>13 MR. HENGVELD: No. I want to be more narrow.</p> <p>14 BY MR. HENGVELD:</p> <p>15 Q After the initial telephone discussion with</p> <p>16 Jeff Goulder, did you form any conclusions about the</p> <p>17 conduct of the defendants in this case?</p> <p>18 A No.</p> <p>19 Q What about after the -- immediately after the second</p> <p>20 conversation with Jeff Goulder, did you form any</p> <p>21 opinions about the conduct of the defendants in this</p> <p>22 case?</p> <p>23 A No.</p> <p>24 Q When did you first form opinions or conclusions about</p> <p>25 the conduct of the defendants in this case?</p>

ANDREW W. STUMPF
COHEN vs JAFFEFebruary 09, 2017
13-16

<p style="text-align: right;">Page 13</p> <p>1 A I first formed a conclusion after reviewing the</p> <p>2 documents that were sent to me by Stinson in connection</p> <p>3 with the case.</p> <p>4 Q You indicated that you had two telephone conversations</p> <p>5 with Jeff Goulder prior to July of 2016?</p> <p>6 A To the best of my recollection.</p> <p>7 Q To the best of your recollection?</p> <p>8 A Yes.</p> <p>9 Q Did you have any conversations with anyone else at the</p> <p>10 Stinson law firm, regarding this case, prior to July of</p> <p>11 2016?</p> <p>12 A I don't believe so.</p> <p>13 Q Have you ever spoken to any other attorney, regarding</p> <p>14 this case, at the Stinson --</p> <p>15 A Yes.</p> <p>16 Q -- law firm --</p> <p>17 A Yes.</p> <p>18 Q -- other than Jeff Goulder?</p> <p>19 A Yes.</p> <p>20 Q And who was that?</p> <p>21 A Michael Vincent and Phil McKnight.</p> <p>22 Q In total -- so this being including the two</p> <p>23 conversations prior to July 2016 -- in total, how many</p> <p>24 conversations did you have with Jeff Goulder regarding</p> <p>25 this case?</p>	<p style="text-align: right;">Page 15</p> <p>1 Q And did your conversation with him reveal that he was</p> <p>2 familiar with the facts, and how that differed?</p> <p>3 MR. GOULDER: Let me just caution you on that,</p> <p>4 Andrew. Under the rules, Mr. Hengeveld is entitled to</p> <p>5 know what facts my firm conveyed to you --</p> <p>6 THE WITNESS: Um-hmm.</p> <p>7 MR. GOULDER: -- and what assumptions we asked</p> <p>8 you to make --</p> <p>9 THE WITNESS: Um-hmm.</p> <p>10 MR. GOULDER: -- and what your billing</p> <p>11 arrangement is with us.</p> <p>12 THE WITNESS: Right.</p> <p>13 MR. GOULDER: So, I believe, Mr. Hengeveld's</p> <p>14 question goes to what facts Mr. McKnight conveyed to</p> <p>15 you, and that's a fair question, but to the extent you</p> <p>16 had conversations that went beyond that, please let us</p> <p>17 know, and don't answer.</p> <p>18 THE WITNESS: Okay. I think --</p> <p>19 Well, why don't you repeat your previous</p> <p>20 question?</p> <p>21 MR. HENGVELD: Sure. Can you read that back?</p> <p>22 THE REPORTER: Yes.</p> <p>23 (Whereupon the question was read</p> <p>24 back by the court reporter as follows:</p> <p>25 QUESTION: And did your conversation with him</p>
<p style="text-align: right;">Page 14</p> <p>1 A I'm sorry. Cumulatively to date?</p> <p>2 Q Sure.</p> <p>3 A Perhaps, 12. On that order of magnitude.</p> <p>4 Q Cumulatively, how many conversations have you had with</p> <p>5 Michael Vincent regarding this case?</p> <p>6 A Perhaps 12, a dozen. That's subject to a large margin</p> <p>7 of error.</p> <p>8 Q And were those conversations exclusively with</p> <p>9 Michael Vincent, or are you including conversations</p> <p>10 where Jeff Goulder might be a part of those</p> <p>11 conversations?</p> <p>12 A Okay. So to break it down, these are -- it's all order</p> <p>13 of magnitude, so probably the numbers are all the same,</p> <p>14 since they're all the same order of magnitude -- but,</p> <p>15 let's say, a dozen just with Michael; three or four with</p> <p>16 both of them; and, perhaps, six with just Jeff.</p> <p>17 Q And how many conversations did you have with</p> <p>18 Phil McKnight?</p> <p>19 A One.</p> <p>20 Q What was the purpose of that conversation?</p> <p>21 A To -- I realized -- I was under the understanding that</p> <p>22 he was also familiar with the facts of this case, and I</p> <p>23 wanted to get a sense of whether his understanding of</p> <p>24 the facts, and what had happened, was any different from</p> <p>25 mine.</p>	<p style="text-align: right;">Page 16</p> <p>1 reveal that he was familiar with the facts, and</p> <p>2 how that differed?)</p> <p>3 THE WITNESS: My conversation with him did not</p> <p>4 produce any facts different than what I'd already been</p> <p>5 provided by Stinson.</p> <p>6 BY MR. HENGVELD:</p> <p>7 Q Okay. Are you relying upon the facts provided by, or</p> <p>8 discussed with -- strike that.</p> <p>9 Are you relying upon the facts provided to</p> <p>10 you, if any, by Mr. McKnight for the opinions that you</p> <p>11 reached in this case?</p> <p>12 A No.</p> <p>13 Q During any of the conversations with Jeff Goulder and</p> <p>14 Michael Vincent, were you asked to make any assumptions</p> <p>15 about the facts, in this case, or assumptions, in</p> <p>16 general, about this case?</p> <p>17 A No.</p> <p>18 Q Have you made any assumptions in formulating your</p> <p>19 opinions in this case?</p> <p>20 A Only where I expressly say the word "assuming."</p> <p>21 Q Okay.</p> <p>22 A Yeah. Only where I expressly say the word "assuming."</p> <p>23 Q And that's in your expert --</p> <p>24 A In the --</p> <p>25 Q -- report --</p>

ANDREW W. STUMPF
COHEN vs JAFFE

February 09, 2017
17-20

<p style="text-align: right;">Page 17</p> <p>1 A -- report, yes.</p> <p>2 Q -- which we'll look at in a minute?</p> <p>3 A Sure.</p> <p>4 MR. HENGVELD: I'm handing you what I've</p> <p>5 marked as Exhibit 56.</p> <p>6 (Marked for identification:</p> <p>7 Deposition Exhibit No. 56.)</p> <p>8 THE WITNESS: Thank you.</p> <p>9 MR. GOULDER: Thank you.</p> <p>10 BY MR. HENGVELD:</p> <p>11 Q I guess, what is Exhibit 56?</p> <p>12 A My expert report.</p> <p>13 Q Okay. Looking at the first page of Exhibit 56, under</p> <p>14 the section "Qualifications," in paragraph 1:</p> <p>15 Does paragraph 1 explain what your current</p> <p>16 employment is?</p> <p>17 A It does, except that the University of Michigan is</p> <p>18 not -- this year -- offering this course, so I'm not</p> <p>19 teaching this particular academic year.</p> <p>20 And, also, the last sentence has changed since</p> <p>21 I wrote this. I have now become a nonequity shareholder</p> <p>22 of Butzel Long, instead of "Of Counsel."</p> <p>23 Q Currently, what percentage of your time is spent</p> <p>24 practicing law versus spent in academia?</p> <p>25 A About 50 percent for each.</p>	<p style="text-align: right;">Page 19</p> <p>1 specific arrangements with senior executives and stock</p> <p>2 options and employment agreements.</p> <p>3 Q Thank you.</p> <p>4 A Um-hmm.</p> <p>5 Q Going back to Exhibit 56, in paragraph 2, does</p> <p>6 paragraph 2 give us a, kind of, summary of your practice</p> <p>7 since you graduated from law school?</p> <p>8 A Yes.</p> <p>9 Q What was the reason that you took the three-year hiatus</p> <p>10 from practicing law in 2004 to 2006, during which you</p> <p>11 studied graduate computational biochemistry?</p> <p>12 A That was a combination of a family change. My wife, at</p> <p>13 the time, very much wanted to move back to Michigan and</p> <p>14 I agreed. It was a combination of that, and being a</p> <p>15 little burned out from the transactional practice of</p> <p>16 law, and wanting to try something different.</p> <p>17 Q Did you obtain your degree in computational --</p> <p>18 A I did not.</p> <p>19 Q -- biochemistry?</p> <p>20 A I did not.</p> <p>21 Q In paragraph 3, the last sentence -- sorry, back to</p> <p>22 Exhibit 56, so it's clear, for the record -- in</p> <p>23 paragraph 3, under "Qualifications," the last sentence</p> <p>24 states:</p> <p>25 I estimate that during the course of my</p>
<p style="text-align: right;">Page 18</p> <p>1 Q For how long has that been true that you've been</p> <p>2 50 percent practicing and 50 percent in academia?</p> <p>3 A About eight years.</p> <p>4 Q Of the 50 percent of time you spent actually practicing</p> <p>5 law, is that practicing exclusively in ERISA law?</p> <p>6 A No. It's ERISA and employee benefits -- or, I'm</p> <p>7 sorry -- executive compensation.</p> <p>8 So can I just clarify that?</p> <p>9 Q Sure.</p> <p>10 A ERISA can be used as a synonym when you're describing</p> <p>11 practice types as employee benefits.</p> <p>12 So when answering your question, when you</p> <p>13 asked if I practice exclusively in ERISA, I'm</p> <p>14 interpreting that to mean employee benefits, and I'm</p> <p>15 answering that I spend it practicing employee benefits</p> <p>16 and executive compensation.</p> <p>17 Q Can you briefly summarize, then, what you mean by the</p> <p>18 differences in the employee benefits side versus the</p> <p>19 executive compensation side?</p> <p>20 A Sure. Employee benefits tends -- and this is all a</p> <p>21 matter of how law firms organize themselves in the US --</p> <p>22 employee benefits tends to refer to more broad-based</p> <p>23 programs like retirement plans and health insurance</p> <p>24 plans.</p> <p>25 Executive compensation tends to refer to</p>	<p style="text-align: right;">Page 20</p> <p>1 career, I've been professionally involved in</p> <p>2 approximately 100 completed acquisitions valued at</p> <p>3 at least \$10 million each.</p> <p>4 Do you see that?</p> <p>5 A Yes.</p> <p>6 Q How many, if any, of those acquisitions involved clients</p> <p>7 coming to you to ask to have the acquisitions structured</p> <p>8 in such a way to avoid controlled group liability?</p> <p>9 A This is going to be an estimate -- because one would</p> <p>10 have to enumerate all of these transactions going back</p> <p>11 30 years -- but I am going to estimate, perhaps, a third</p> <p>12 of them, say 30, involved situations where that was an</p> <p>13 important issue. I -- let's modify that to say 20 to</p> <p>14 30.</p> <p>15 Q So to be clear, have you had clients come to you with</p> <p>16 about 20 or 30 acquisitions where they have asked you to</p> <p>17 structure an acquisition of a company that had a</p> <p>18 multiemployer pension plan in such a way that the</p> <p>19 acquiror would not have controlled group liability</p> <p>20 attached to any of the other entities that the acquiror</p> <p>21 might also own?</p> <p>22 A So I have to clarify two things. It's just struck me,</p> <p>23 right now, that you're specifically asking about</p> <p>24 multiemployer plan liabilities, as opposed to Title IV</p> <p>25 liability, generally, under ERISA.</p>

ANDREW W. STUMPF
COHEN vs JAFFE

February 09, 2017
21-24

<p style="text-align: right;">Page 21</p> <p>1 The 20 to 30 relates to Title IV liability, 2 generally, including multiemployer plans, but also 3 single-employer plans. For multiemployer plans, that's 4 less common, so it's probably more like 10. So I want 5 to clarify that. 6 Q Thank you. 7 A The second thing, in response to your most recent 8 question, you've asked how many transactions have 9 clients specifically asked that we structure the 10 transaction to avoid controlled group liability. 11 Q Um-hmm. 12 A And that's very few in the sense of the client having to 13 put the question that way, as opposed to "Can you tell 14 us whether we will have controlled group liability?" 15 But, I think, if you read your question 16 broadly to include that, then I would say, roughly, 10 17 on the multiemployer side, and 20 to 30 Title IV, 18 altogether. 19 Q Do the Title IV plans have the same law applicable to it 20 regarding controlled group liability? 21 A Yes. Multiemployer pension plans are a subset of 22 Title IV. 23 Q When is the last time that you had a client retain you 24 with regard to an acquisition that involved an issue of 25 avoiding controlled group liability?</p>	<p style="text-align: right;">Page 23</p> <p>1 been unaware of at the time? 2 Q That's it. That's -- yeah, that's -- 3 MR. GOULDER: Answer that one. 4 THE WITNESS: No. 5 BY MR. HENGVELD: 6 Q That's the question that I would like for you to answer. 7 A Okay. No. 8 Q Going back to Exhibit No. 56, in Section -- I'm 9 referring you to Section II, "Documents Reviewed in 10 Preparation of Expert Opinion." 11 Are the documents enumerated in that section, 12 in numbers 1 to 18, the only documents that you have 13 looked at in order to form your opinions in this case? 14 A As of now? 15 Q Yes. 16 A No. 17 Q What other documents, in addition to those listed in 18 Exhibit 56, have you reviewed in order to form your 19 opinions in this case? 20 A Well -- so you're saying in order to form my opinions. 21 So these are the documents that I had reviewed 22 as of the time I read this report. In order to form the 23 opinion that I -- the updated opinion that I have, as of 24 today, I have reviewed documents since then. 25 I won't be able, from memory, to recite all of</p>
<p style="text-align: right;">Page 22</p> <p>1 A Let me think. Four years ago. 2 Q Have you ever had a client, in which you advised about 3 an acquisition, have a controlled group -- as a result 4 of the acquisition -- that you were unaware of? 5 MR. GOULDER: I'm sorry. Can I get that 6 question back? 7 THE REPORTER: Yes. 8 MR. GOULDER: I didn't follow it. 9 (Whereupon the question was read 10 back by the court reporter as follows: 11 QUESTION: Have you ever had a client, in which 12 you advised about an acquisition, have a 13 controlled group -- as a result of the 14 acquisition -- that you were unaware of?) 15 THE WITNESS: Um -- 16 BY MR. HENGVELD: 17 Q Do you understand the question? 18 A Well, I guess, to make sense of it, I have to assume you 19 mean that I was unaware of it until later? 20 Because if I was unaware of it, and I'm still 21 unaware of it, then, obviously, I don't know. 22 Q Um -- 23 A So you're asking: 24 Did I later find out that a transaction I 25 structured resulted in a controlled group that I had</p>	<p style="text-align: right;">Page 24</p> <p>1 them, but, for example, they include additional 2 depositions of Mr. Chaffee, Mr. Cohen, and Mr. Schreier. 3 And, I believe, I also did look at the other 4 expert reports filed by the defendant, and all of the 5 exhibits to those. 6 Q Has a review of those depositions, and the defendants' 7 expert reports, changed your opinions that you've 8 expressed in Exhibit 56 at all? 9 A No. 10 Q Did you review just Jordan Schreier's expert report, in 11 this case, or did you review the other two expert 12 reports as well? 13 A The other two as well. 14 Q What was your purpose in reviewing those expert reports? 15 A To see if there was anything that would change my 16 opinion. 17 Q Is there any document, or other piece of evidence that 18 you've asked for, that you have not been given, in order 19 to form your opinions? 20 A The only thing I mentioned, that I hadn't received, was 21 our expert report by Mr. Geddes, but that turns out it's 22 not related to -- my understanding is it does not relate 23 to anything in my report, or my opinion. 24 Q What was the reason you were asking for Mr. Geddes' 25 report?</p>

ANDREW W. STUMPF
COHEN vs JAFFEFebruary 09, 2017
25-28

<p style="text-align: right;">Page 25</p> <p>1 A Completeness.</p> <p>2 Q Did you review, or ask for, the report from the other</p> <p>3 damage expert in -- on behalf of plaintiffs?</p> <p>4 A No.</p> <p>5 Q Do you know who Jordan Schreier is?</p> <p>6 A I've met him once.</p> <p>7 Q Where was that meeting?</p> <p>8 A That was in a meeting at a restaurant in Ann Arbor.</p> <p>9 Q What was the purpose of that?</p> <p>10 A The purpose of the meeting was the law firm I was</p> <p>11 previously a part of was -- at that point, we'd been</p> <p>12 approached by Butzel, and by other firms about a merger,</p> <p>13 and we were talking to other firms to see whether -- if</p> <p>14 other people were also interested before we made a</p> <p>15 decision.</p> <p>16 So we were talking with Mr. Schreier about</p> <p>17 whether Dickinson Wright would be interested in working</p> <p>18 with our firm.</p> <p>19 Q Do you have an opinion as to whether Jordan Schreier is</p> <p>20 a qualified ERISA, or standard of care expert?</p> <p>21 A I have no basis to know.</p> <p>22 Q Do you know Jeff Weiss?</p> <p>23 A I do not.</p> <p>24 Q Do you know Deb Baughman?</p> <p>25 A I have met her at least twice, yeah.</p>	<p style="text-align: right;">Page 27</p> <p>1 A No.</p> <p>2 Q Do you know any of the other attorneys at the Jaffe law</p> <p>3 firm?</p> <p>4 A I met a couple during the meeting we just mentioned,</p> <p>5 whose names I'm afraid I can't recite.</p> <p>6 Q How many hours did you spend either reviewing documents,</p> <p>7 or preparing the expert report that's Exhibit No. 56?</p> <p>8 A I could give you a precise answer if I checked my time</p> <p>9 records, so this will have to be a guess.</p> <p>10 Between reviewing documents, and preparing the</p> <p>11 report, I'm going to guess 50 is an order of magnitude.</p> <p>12 Q Of those 50, how many hours were spent reviewing the</p> <p>13 documents that are listed on Exhibit 56, in</p> <p>14 Subsection II, "Documents Reviewed in Preparation of</p> <p>15 Expert Opinion"?</p> <p>16 A So 50 is a guess. Of whatever the number actually is,</p> <p>17 I'm going to guess about 40 percent. So if the</p> <p>18 denominator is 50, that would be 20 hours.</p> <p>19 Q In this case, there's been invoices from Butzel Long</p> <p>20 from you for August 2016 and September 2016. Did you</p> <p>21 send out invoices since September of 2016?</p> <p>22 A I would have for sure, yeah.</p> <p>23 Q Did you send out invoices on a monthly basis?</p> <p>24 A We -- that is our practice.</p> <p>25 Q And that is, indeed, what occurred -- what occurred in</p>
<p style="text-align: right;">Page 26</p> <p>1 Q What was -- what were those meetings, and what were the</p> <p>2 occasion for those meetings?</p> <p>3 A So in Deb's case, I have met her once, or possibly</p> <p>4 twice, at Bar Association functions. And then one of</p> <p>5 the other meetings was exactly the same circumstances as</p> <p>6 the meeting in which I met Mr. Schreier, but involving</p> <p>7 Jaffe.</p> <p>8 Q That is, you were considering taking your practice to</p> <p>9 the Jaffe law firm?</p> <p>10 A That's correct.</p> <p>11 Q How long ago was that?</p> <p>12 A This was -- this is 2017. I am going to guess</p> <p>13 two years -- roughly, two years ago.</p> <p>14 Q Was there a particular reason that you decided to go</p> <p>15 with the Butzel law firm versus the Jaffe law firm?</p> <p>16 A There were a number of particular reasons.</p> <p>17 Q Does any of the reasons that you did not take your</p> <p>18 practice to the Jaffe law firm have to do with the</p> <p>19 standard of practice as it relates to this case?</p> <p>20 A No. We never heard of this case at the time.</p> <p>21 Q Does any of the reasons that you did not take your</p> <p>22 practice to the Jaffe law firm have to do with the way</p> <p>23 in which the firm practices law, in general?</p> <p>24 A No.</p> <p>25 Q Do you know Lee Kellert?</p>	<p style="text-align: right;">Page 28</p> <p>1 this case?</p> <p>2 A I can't tell you without checking the records, but I</p> <p>3 have no reason to believe, otherwise.</p> <p>4 MR. HENGVELD: Could we go off the record a</p> <p>5 minute?</p> <p>6 (Off-the-record discussion.)</p> <p>7 BY MR. HENGVELD:</p> <p>8 Q Since issuing your report -- that being Exhibit 56 --</p> <p>9 how many hours did you spend on this case?</p> <p>10 A Well, I'd love to be able to check the records to give</p> <p>11 you an exact answer, so this will have to be a guess</p> <p>12 again. The report was issued in early December. I'm</p> <p>13 going to guess 30 since then, 20 to 30.</p> <p>14 Q How many telephone conversations have you had with</p> <p>15 Jeff Goulder or Michael Vincent after issuing your</p> <p>16 report?</p> <p>17 A On the order of five.</p> <p>18 Q What did you do to prepare for your deposition today?</p> <p>19 A I reviewed all the documents and I talked with</p> <p>20 Mr. Goulder.</p> <p>21 Q You said "reviewed all the documents." Are you</p> <p>22 referring to those documents listed in your report, as</p> <p>23 well as the depositions you mentioned, as well as the</p> <p>24 defendants' expert reports in this case?</p> <p>25 A As well as my own report, yes.</p>

ANDREW W. STUMPF
COHEN vs JAFFE

February 09, 2017
29-32

<p style="text-align: right;">Page 29</p> <p>1 Q How long did you meet with Mr. Goulder, or talk with 2 Mr. Goulder, prior, in preparation for your deposition 3 today? 4 A I met with him for, perhaps, 30 minutes yesterday. And 5 you asked "or talk" with him, and I think during the 6 additional phone calls, probably another 10 or 7 15 minutes. 8 Q Back to Exhibit 56, I'm turning your attention to 9 page number 4. 10 A Um-hmm. 11 Q Under Subsection IV -- sorry -- under Section IV, 12 Subsection A, paragraph number 1, you state that: 13 Based on the documents I have reviewed, it 14 appears that Jaffe, Raitt did not carefully identify its 15 client at the time of the acquisition. 16 Do you see that? 17 A Yes. 18 Q What documents, in particular, lead you to conclude that 19 Jaffe, Raitt did not carefully identify its client at 20 the time of the acquisition? 21 A For this conclusion, the documents were the depositions 22 of the Jaffe lawyers, and the exhibits to those 23 depositions. 24 Q Do you recall any document, in particular, that was an 25 exhibit to those depositions?</p>	<p style="text-align: right;">Page 31</p> <p>1 Q You do not agree with that? 2 A I do not agree with that. 3 Q What is your opinion with regard to the requirement that 4 a lawyer and the defendants, in this case, in 5 particular, have a written engagement letter with their 6 clients? 7 A So you're using the word "requirement" without having 8 defined it. Your previous question was "standard of 9 care." My view is strong that the standard of care is 10 that you should have a written engagement letter. 11 If you mean a requirement elsewhere, I need to 12 know what you mean by that. 13 Q What is the basis for your conclusion that the standard 14 of care requires a written engagement letter? 15 A My 30 years of practice in trying to make sure that both 16 we, and the lawyer -- we and our client know exactly who 17 is representing whom as to what. 18 Q So is that based upon your particular practice over 19 30 years? 20 A My practice, and the standards of all the firms I've 21 been associated with. 22 Q Can you identify either a Model Rule of Professional 23 Conduct, or a statute, or caselaw, or some other 24 authority, that requires a lawyer to have a written 25 engagement letter with a client?</p>
<p style="text-align: right;">Page 30</p> <p>1 A My recollection is that the -- there was an engagement 2 letter produced during one of the -- during the course 3 of one of the depositions that was attached, and so that 4 document, as well as the answers, I believe, in 5 Mr. Weiss' deposition. 6 And then, I guess, I would also have to add, 7 as part of the conclusion, the other document that was 8 relevant was the actual transaction document that 9 occurred in the transaction. 10 Q The closing statement? 11 A The purchase agreement, whatever it was that -- I can't 12 remember the exact title -- the purchase agreement by 13 which LSI was purchased. 14 Q Do you agree that a written engagement letter with a 15 client is not required under the standard of care? 16 MR. GOULDER: Object to the form. Calls for a 17 legal conclusion. 18 THE WITNESS: Um, I -- 19 MR. HENGVELD: Let me rephrase that. 20 THE WITNESS: All right. 21 BY MR. HENGVELD: 22 Q Do you agree that the standard of care applicable to the 23 defendants, in this case, does not require them to have 24 a written engagement letter with their clients? 25 A No.</p>	<p style="text-align: right;">Page 32</p> <p>1 A No. And I understand that to be a different question 2 than the standard of care. 3 Q So to be clear, though, the standard of care that you're 4 applying to the defendants, in this case, is a result of 5 your practice at particular law firms throughout your 6 career? 7 A Yes. 8 Q Do you make a distinction between what is a best 9 practice versus what is the standard of care in 10 formulating any of your opinions in this case? 11 A Not in this case. Obviously, there is a conceptual 12 difference between best practice and standard of care, 13 but, in this case, I don't believe I was asked about, or 14 have opined about, best practices. 15 Q And, in this case, you believe that Jaffe, Raitt, or the 16 defendants in this case, fell below the standard of care 17 by not having a written engagement letter with their 18 clients? 19 A Yes, I do. 20 Q And that's based upon you having written engagement 21 letters for your clients over your career? 22 MR. GOULDER: Object to the form. Misstates 23 his prior testimony. 24 THE WITNESS: Yeah. It's -- it's not based on 25 what I have done, specifically, so much as it's based on</p>

ANDREW W. STUMPF
COHEN vs JAFFE

February 09, 2017
33-36

<p style="text-align: right;">Page 33</p> <p>1 having had to decide -- every time we took on a new</p> <p>2 matter -- who our client was, and having had to reflect</p> <p>3 that accurately, and all of the conclusions that went</p> <p>4 into that, as well as the requirements and practices of</p> <p>5 the various law firms that I've worked for.</p> <p>6 So it's -- it's -- I get that your question</p> <p>7 was whether it's just based on what I've done, and</p> <p>8 that's -- I have to answer no, because it's based on all</p> <p>9 the things I just listed.</p> <p>10 BY MR. HENGVELD:</p> <p>11 Q Well, do you agree that a lawyer can still reflect on</p> <p>12 the accuracy of who his client is, without having a</p> <p>13 written engagement letter?</p> <p>14 A Yes.</p> <p>15 Q And do you agree that nothing in the Michigan Rules of</p> <p>16 Professional Conduct, or -- requires a written</p> <p>17 engagement letter for this particular engagement in</p> <p>18 which the defendants were engaged?</p> <p>19 A To my --</p> <p>20 MR. GOULDER: Object --</p> <p>21 THE WITNESS: -- knowledge --</p> <p>22 MR. GOULDER: -- to the form. Asked and</p> <p>23 answered.</p> <p>24 THE WITNESS: To my knowledge, I know of no</p> <p>25 such requirement in the Michigan rules.</p>	<p style="text-align: right;">Page 35</p> <p>1 Q Do you have an understanding of the ownership structure,</p> <p>2 or equity structure, for any of the other acquisitions</p> <p>3 that CoBe Capital, Neal Cohen, or Darren Chaffee, have</p> <p>4 been involved with prior to the LSI acquisition?</p> <p>5 A The one I have looked at, specifically in connection</p> <p>6 with my report and my opinion, is the ownership</p> <p>7 structure of a company called "SSL." That's the only</p> <p>8 one that I'm -- as I sit here -- familiar with enough to</p> <p>9 describe the ownership.</p> <p>10 Q In any of the documents that you have reviewed -- and</p> <p>11 that's including e-mails from Mr. Chaffee and Mr. Cohen,</p> <p>12 to either Jeff Weiss, or the other lawyers at the</p> <p>13 Jaffe, Raitt law firm -- did you ever have the</p> <p>14 impression that CoBe Capital would be acquiring LSI, or</p> <p>15 that CoBe Capital, itself, would be involved in the</p> <p>16 acquisition?</p> <p>17 MR. GOULDER: Object to the form. Vague.</p> <p>18 THE WITNESS: Yeah. So did I ever have the</p> <p>19 impression? That's a difficult question to answer.</p> <p>20 What I can tell you is that that is an area</p> <p>21 where the e-mails, and the other documents, are very</p> <p>22 unclear.</p> <p>23 BY MR. HENGVELD:</p> <p>24 Q Going back to Exhibit 56, Sub- -- sorry -- Section IV,</p> <p>25 paragraph -- Subsection A, paragraph 2, says: Based on</p>
<p style="text-align: right;">Page 34</p> <p>1 BY MR. HENGVELD:</p> <p>2 Q Do you have an understanding of the history between</p> <p>3 CoBe Capital and the Jaffe, Raitt law firm, prior to the</p> <p>4 LSI acquisition?</p> <p>5 A Well -- so that's a pretty vague question. I'll tell</p> <p>6 you what my understanding is. My understanding -- based</p> <p>7 on what I've seen -- is that there was prior</p> <p>8 representation by Jaffe of -- and, I believe, the</p> <p>9 previous engagement letter identified CoBe.</p> <p>10 Q Does that history -- that being the prior representation</p> <p>11 of CoBe Capital by Jaffe -- have any impact on your</p> <p>12 opinions in this case?</p> <p>13 A Yes.</p> <p>14 Q How so?</p> <p>15 A It seems clear to me that it would have been apparent,</p> <p>16 from the prior representation, that the people involved</p> <p>17 with CoBe Capital, as well as the various entities,</p> <p>18 formed a -- kind of a net of different investment</p> <p>19 companies, which I've described in my report as being</p> <p>20 typical of the, sort of, portfolio investor.</p> <p>21 And that knowledge that Jaffe would have</p> <p>22 had -- and that was the nature of this set of</p> <p>23 businesses -- increases my view that Jaffe should have</p> <p>24 been on high alert for a controlled group liability, in</p> <p>25 particular, a brother-sister liability.</p>	<p style="text-align: right;">Page 36</p> <p>1 the documents I have reviewed, it seems clear that</p> <p>2 Messrs. Cohen and Chaffee were, as individual investors,</p> <p>3 seeking guidance on their own behalf.</p> <p>4 Do you see where I read that from?</p> <p>5 A I do.</p> <p>6 Q What documents, specifically, then, are you referring to</p> <p>7 that you believe made clear that Mr. Cohen and Chaffee,</p> <p>8 as individuals, were seeking guidance from the Jaffe law</p> <p>9 firm?</p> <p>10 A For this one, it's -- in particular, it's an e-mail,</p> <p>11 which, I believe, is from -- I'm going to say --</p> <p>12 April 3, 2013.</p> <p>13 Q I'm handing you what has been previously marked as</p> <p>14 Exhibit No. 7, in this case. Is this the document that</p> <p>15 you're referring to, the e-mail you're referring to?</p> <p>16 A Yeah. This -- this is the thread that includes that</p> <p>17 e-mail.</p> <p>18 Q So where, in particular, do you believe that it makes</p> <p>19 clear that Cohen and Chaffee were -- as individual</p> <p>20 investors -- seeking guidance from Jaffe?</p> <p>21 A So this is in -- we're looking at this thread -- it's</p> <p>22 the e-mail from Wednesday, April 3, 2013, at 10:43 a.m.,</p> <p>23 and it's the third paragraph.</p> <p>24 Q Can you read, for me, what you're referring to,</p> <p>25 specifically?</p>

ANDREW W. STUMPF
COHEN vs JAFFE

February 09, 2017
37-40

<p style="text-align: right;">Page 37</p> <p>1 A Sure.</p> <p>2 One of the big issues in this deal is the</p> <p>3 facility's union, and they sponsor a multiemployer</p> <p>4 pension plan. The potential clawback on the withdrawal</p> <p>5 liability is a risk that HNI has.</p> <p>6 We also want to be sure that we aren't</p> <p>7 personally liable for other assets/companies at risk.</p> <p>8 We want to discuss this further. I understand the risk</p> <p>9 around this pretty well, because we've been researching.</p> <p>10 Q Is it your opinion, in this case, that the defendants</p> <p>11 represented SSL Assets in some capacity?</p> <p>12 A Yes.</p> <p>13 Q In your opinion, how is it that the defendants</p> <p>14 represented SSL Assets in any capacity?</p> <p>15 A Because Mr. Chaffee had come forward and effectively</p> <p>16 said, "We would like you to represent us, personally, as</p> <p>17 well as the organizations," for which I'm speaking.</p> <p>18 Q There's nothing in Exhibit 7 that lists what those</p> <p>19 entities are that he's seeking representation, on behalf</p> <p>20 of, or speaking, on behalf of, and, in particular,</p> <p>21 nothing with regard to SSL Assets; correct?</p> <p>22 A Correct.</p> <p>23 Q In your opinion, how should the defendants have</p> <p>24 understood that they were representing SSL Assets, or</p> <p>25 any other entity?</p>	<p style="text-align: right;">Page 39</p> <p>1 But, for example, that's irrelevant if</p> <p>2 Mr. Chaffee had, for example, said expressly, "I hereby</p> <p>3 request my representation -- I hereby request that you</p> <p>4 represent all my entities without listing them."</p> <p>5 There would be no question that I represented</p> <p>6 them, even though he hadn't listed them. And what I'm</p> <p>7 saying is that I view this language as effectively</p> <p>8 synonymous to that, particularly, given the context.</p> <p>9 Q So when you have been involved in those approximately</p> <p>10 100 acquisitions, did you represent not only the</p> <p>11 acquiror, but also the entities that the acquiror may,</p> <p>12 or may not, own?</p> <p>13 A Who we represented in each of those acquisitions would</p> <p>14 have been a function of who we named in our engagement</p> <p>15 letter. It's very fact-specific.</p> <p>16 So, to be clear -- and just getting to the</p> <p>17 premise of your question -- I'm not saying that by</p> <p>18 representing one company, you automatically represent</p> <p>19 all the other companies.</p> <p>20 I'm saying if the facts are such that the</p> <p>21 person has come to you, and asked you to represent a</p> <p>22 bunch of companies, then you represent a bunch of</p> <p>23 companies. If they have not, then you don't.</p> <p>24 Q And, in this case, is the language -- that you've</p> <p>25 identified in Exhibit 7 -- the basis for you concluding</p>
<p style="text-align: right;">Page 38</p> <p>1 A By this language.</p> <p>2 Q By what language, in particular?</p> <p>3 A That I just read.</p> <p>4 That we want to be sure that we are not</p> <p>5 personally liable, or put our other assets or companies</p> <p>6 at risk.</p> <p>7 So I read that as at least arguably equivalent</p> <p>8 to having said, "I am coming to you to represent us, and</p> <p>9 our controlled group of companies, to make sure we don't</p> <p>10 have controlled group liability."</p> <p>11 Q Is it your opinion that an attorney who advises about</p> <p>12 potential controlled group liability represents each and</p> <p>13 every entity that may be a part of that controlled</p> <p>14 group?</p> <p>15 A If they are asked to, yes. If they are not asked to,</p> <p>16 no. You can't say without knowing what the request was.</p> <p>17 Q Well, in this particular case, was it your opinion that</p> <p>18 the defendants represented -- as their clients -- each</p> <p>19 and every entity that may, or may not, have been part of</p> <p>20 a controlled group as a result of the acquisition of</p> <p>21 LSI?</p> <p>22 A Yes. They represented every entity for which</p> <p>23 Mr. Chaffee was speaking in this e-mail.</p> <p>24 Q Do you know what entities those are?</p> <p>25 A I do not. I couldn't list all of them, in any case.</p>	<p style="text-align: right;">Page 40</p> <p>1 that the defendants represented all of the entities that</p> <p>2 both Mr. Chaffee and Mr. Cohen owned at the time of the</p> <p>3 LSI acquisition?</p> <p>4 A Yes, I am. And I'm specifically saying that Jaffe</p> <p>5 certainly should have operated under that assumption,</p> <p>6 given the context.</p> <p>7 So again, you have language that can be read</p> <p>8 as synonymous to "I'm coming to ask you to represent all</p> <p>9 my companies."</p> <p>10 You also just have the fact that the client is</p> <p>11 particularly worried about all those companies. And in</p> <p>12 my experience, under those circumstances, you have to</p> <p>13 operate as though you represent all those companies, and</p> <p>14 it's the burden that would be on you, if you think</p> <p>15 otherwise, to limit the case by writing an engagement</p> <p>16 letter of that fact.</p> <p>17 Q Given your opinion, do you agree that it is the client's</p> <p>18 responsibility and duty to know what businesses they</p> <p>19 own?</p> <p>20 A When you say "duty," that's under -- that's a vague</p> <p>21 term. I don't know what would provide them with a duty.</p> <p>22 But, I guess, what I'm assuming you're asking</p> <p>23 is in the context of an interaction like this, is it the</p> <p>24 client's responsibility to know what businesses they</p> <p>25 own?</p>

ANDREW W. STUMPF
COHEN vs JAFFEFebruary 09, 2017
41-44

<p style="text-align: right;">Page 41</p> <p>1 And certainly the answer is yes. It is their</p> <p>2 responsibility to know what businesses they own.</p> <p>3 Q Do you agree that a lawyer can rely upon the client's</p> <p>4 knowledge of what businesses they own --</p> <p>5 A Sure.</p> <p>6 Q -- if --</p> <p>7 Can you -- do you agree that a lawyer can rely</p> <p>8 upon the client to know with whom he owns those</p> <p>9 businesses?</p> <p>10 A Yes. But, of course, in certain contexts the word "own"</p> <p>11 can have technical, specific statutory meaning, and the</p> <p>12 lawyer can't rely on the client to know that.</p> <p>13 Q Do you believe that the level of sophistication of a</p> <p>14 client impacts the way the lawyer can communicate with</p> <p>15 the client?</p> <p>16 A Yes.</p> <p>17 Q So the more sophisticated a client is, the lawyer can</p> <p>18 communicate in more sophisticated ways? Would you agree</p> <p>19 with that?</p> <p>20 A I would, although I think I might add that, in this</p> <p>21 case, it might produce a different result, because the</p> <p>22 more sophisticated client may know that there's a</p> <p>23 difference between technical equity ownership and</p> <p>24 economic ownership.</p> <p>25 And so you might be less likely to be able to</p>	<p style="text-align: right;">Page 43</p> <p>1 pension withdrawal liability?</p> <p>2 A My recollection is this, that Mr. Chaffee had become</p> <p>3 aware that there was such a thing, partly from a friend</p> <p>4 of a colleague, and that he and/or his colleagues had</p> <p>5 done some Internet-based searching around the topic.</p> <p>6 Q And that friend you refer to is a lawyer; correct?</p> <p>7 A I can't tell you, with certainty, but that is my</p> <p>8 recollection that it was a lawyer friend who was not</p> <p>9 practicing as a lawyer, but was at another private</p> <p>10 equity firm.</p> <p>11 Q And do you specifically recall that that lawyer was</p> <p>12 involved in an acquisition involving pension withdrawal</p> <p>13 liability?</p> <p>14 A Only vaguely. I -- I don't remember the details.</p> <p>15 Q Is what you just answered the total and extent to which</p> <p>16 you have any understanding of what due diligence</p> <p>17 Mr. Chaffee and Neal Cohen performed with regard to</p> <p>18 controlled group liability prior to the acquisition of</p> <p>19 LSI?</p> <p>20 A As -- as I remember it, yes.</p> <p>21 Q Are you aware that Mr. Chaffee had researched articles</p> <p>22 regarding controlled group liability, or pension</p> <p>23 withdrawal liability?</p> <p>24 A Yes.</p> <p>25 Q And are you aware that Mr. Chaffee had read the</p>
<p style="text-align: right;">Page 42</p> <p>1 just rely on a simple word "ownership," and you might</p> <p>2 have to be more precise for the more technically</p> <p>3 sophisticated client.</p> <p>4 MR. GOULDER: If you get to a point where you</p> <p>5 want a break, just say the word.</p> <p>6 THE WITNESS: I'm good, but if anybody else</p> <p>7 here wants to take a break, that's fine.</p> <p>8 BY MR. HENGVELD:</p> <p>9 Q Let's go back to Exhibit 56. I'm still under</p> <p>10 Section IV, but now I'm on Subsection B, paragraph 2.</p> <p>11 Do you see where I'm referring to?</p> <p>12 A I do, yes.</p> <p>13 Q In that paragraph, you indicate that the clients,</p> <p>14 themselves, specifically highlighted the issue of</p> <p>15 potential controlled group liability; correct?</p> <p>16 A Correct.</p> <p>17 Q Do you know what due diligence Darren Chaffee and</p> <p>18 Neal Cohen performed, prior to retaining the Jaffe law</p> <p>19 firm regarding the LSI acquisition?</p> <p>20 A I only got the sense that I got by reviewing</p> <p>21 Mr. Chaffee's deposition.</p> <p>22 Q Did you review the exhibits to that deposition as well?</p> <p>23 A Very briefly.</p> <p>24 Q Do you know, specifically, what due diligence</p> <p>25 Darren Chaffee or Neal Cohen performed with regard to</p>	<p style="text-align: right;">Page 44</p> <p>1 Sun Capital Partners case prior to retaining the Jaffe</p> <p>2 law firm?</p> <p>3 MR. GOULDER: Objection. Assumes facts not in</p> <p>4 evidence.</p> <p>5 THE WITNESS: Yeah, I -- I don't remember that</p> <p>6 part of it, but it wouldn't surprise me.</p> <p>7 BY MR. HENGVELD:</p> <p>8 Q Are you aware that Mr. Chaffee had researched</p> <p>9 articles -- for example, an article from</p> <p>10 Skadden, Arps -- regarding the Sun Capital Partners</p> <p>11 case?</p> <p>12 A I -- again, I didn't remember that it specifically</p> <p>13 related to Sun Capital, but I did remember -- I did</p> <p>14 remember Skadden was one of them that he found articles</p> <p>15 online.</p> <p>16 Q In your opinion, is Mr. Chaffee a sophisticated client?</p> <p>17 MR. GOULDER: Object to the form. Vague.</p> <p>18 Beyond the scope. That's his opinion.</p> <p>19 THE WITNESS: Yeah. So I have to say the word</p> <p>20 "sophisticated" is an extremely -- not just vague, but</p> <p>21 also a relative term, so I have to say sophisticated</p> <p>22 with respect to what?</p> <p>23 If the question is, was he sophisticated in</p> <p>24 connection with financial transactions, relative to an</p> <p>25 average person on the street, then that answer is yes.</p>

ANDREW W. STUMPF
COHEN vs JAFFE

February 09, 2017
45-48

<p style="text-align: right;">Page 45</p> <p>1 BY MR. HENGVELD:</p> <p>2 Q What about with regard to sophistication regarding</p> <p>3 issues of pension withdrawal liability and controlled</p> <p>4 group liability?</p> <p>5 A Absolutely not. He was aware that the issue existed,</p> <p>6 but in terms of sophisticated understanding of the</p> <p>7 issue, absolutely not.</p> <p>8 Q Do you believe that a nonlawyer client can understand</p> <p>9 the issues regarding controlled group liability when</p> <p>10 they're acquiring a business that has, or sponsors, a</p> <p>11 multiemployer pension plan?</p> <p>12 A So the question is:</p> <p>13 Is it possible for a client to understand</p> <p>14 those issues?</p> <p>15 Q Yes.</p> <p>16 A Yes.</p> <p>17 Q Are the opinions that you provide, in this case, taking</p> <p>18 into account the level of sophistication by Mr. Chaffee</p> <p>19 and Mr. Cohen as it relates to controlled group</p> <p>20 liability?</p> <p>21 A Yes.</p> <p>22 Q Again, you deem -- you deem both of them -- that is</p> <p>23 Chaffee and Cohen -- to be completely unsophisticated</p> <p>24 regarding controlled group liability issues?</p> <p>25 A Well, I'm not sure I'd use the word -- so</p>	<p style="text-align: right;">Page 47</p> <p>1 Do you see that?</p> <p>2 A Yes, I do.</p> <p>3 Q The attribution concept actually derives from the</p> <p>4 tax code; correct?</p> <p>5 A Correct. Well, I guess I have to clarify that.</p> <p>6 Ultimately, the attribution, in question, is a function</p> <p>7 of ERISA, but it defines it by cross-reference to the</p> <p>8 tax code. So the definition stems from tax definitions.</p> <p>9 Q Right. The concept of attribution is formed via the</p> <p>10 tax code, and is applied, in this particular case, under</p> <p>11 the ERISA law --</p> <p>12 A So that --</p> <p>13 Q -- statutes?</p> <p>14 A -- phrasing doesn't compute for me. The concept being</p> <p>15 formed and applied in this case.</p> <p>16 The way -- the way I phrase it is, ERISA</p> <p>17 imposes attributed ownership, and defines it by</p> <p>18 cross-reference.</p> <p>19 Q Going back to Exhibit 56, page 8, paragraph number 9.</p> <p>20 In there you state that:</p> <p>21 Because of these detailed, intricate ownership</p> <p>22 tests, the most common approach to gaining a confident</p> <p>23 understanding of the extent of controlled group status</p> <p>24 is to obtain or create, with the client's input, an</p> <p>25 organizational chart.</p>
<p style="text-align: right;">Page 46</p> <p>1 "sophisticated," again, is such a vague and relative</p> <p>2 term. They're sophisticated relative to people who have</p> <p>3 never heard of the issue, but if we ask ourselves, "Are</p> <p>4 you sophisticated on this issue? Do you have a</p> <p>5 sophisticated understanding of this issue?" then</p> <p>6 absolutely not, they are not sophisticated.</p> <p>7 And, I guess, I would be willing to say, in</p> <p>8 your words, "completely unsophisticated," except to the</p> <p>9 extent they're aware that the issue exists. That's more</p> <p>10 sophisticated than the average person.</p> <p>11 Q Well, do you know whether Mr. Chaffee, or Mr. Cohen, was</p> <p>12 aware of the brother-sister test, or parent-subsidiary</p> <p>13 test, regarding controlled group liability prior to</p> <p>14 retaining Jaffe?</p> <p>15 A So I don't know whether they'd heard of it. They might</p> <p>16 have heard of it.</p> <p>17 Q Going back to Exhibit 56, turning your attention to</p> <p>18 page 8, and the paragraph number 8 at the top of page 8.</p> <p>19 Do you see that?</p> <p>20 A Yes, I do.</p> <p>21 Q You say:</p> <p>22 Crucially, in applying either the</p> <p>23 parent-subsidiary, or the brother-sister test, ownership</p> <p>24 must be "attributed" from certain entities and persons</p> <p>25 to others.</p>	<p style="text-align: right;">Page 48</p> <p>1 Do you see that?</p> <p>2 A I do.</p> <p>3 Q Does the standard of care require that an organizational</p> <p>4 chart be obtained, or created, when rendering advice</p> <p>5 about whether there's controlled group liability?</p> <p>6 A So if the question is:</p> <p>7 Can the standard of care be met without an</p> <p>8 organizational chart?</p> <p>9 The theoretical answer is no.</p> <p>10 What the standard of care requires is that you</p> <p>11 develop a complete understanding of the organization,</p> <p>12 and if it's possible for you to do that, simply by means</p> <p>13 of words -- A company owns B company, which is</p> <p>14 30 percent owned by C company, et cetera -- that</p> <p>15 theoretically can suffice.</p> <p>16 But, in my experience, the way the human brain</p> <p>17 works, the only way to get the actual understanding</p> <p>18 necessary to perform the standard of care for a</p> <p>19 complicated organization is through a chart.</p> <p>20 But, nonetheless, if your brain worked the</p> <p>21 right way, theoretically you could acquire the</p> <p>22 information without a chart.</p> <p>23 Q Okay. So then, to be clear -- I want to make sure that</p> <p>24 your prior answer was accurate -- theoretically, you are</p> <p>25 able to comply with the standard of care without an</p>

ANDREW W. STUMPF
COHEN vs JAFFE

February 09, 2017
49-52

<p style="text-align: right;">Page 49</p> <p>1 organizational chart; correct?</p> <p>2 A Correct. I've never met anyone, I think, that could do</p> <p>3 that, but correct, theoretically.</p> <p>4 Q Well, if you had a client that did not have any common</p> <p>5 ownership with another individual or a company, that was</p> <p>6 part of the acquisition of an entity with a</p> <p>7 multiemployer pension plan, then you could -- without</p> <p>8 having an organizational chart -- conclude that there is</p> <p>9 no brother-sister tests -- or, sorry -- there's no</p> <p>10 brother-sister relationship for controlled group</p> <p>11 liability; correct?</p> <p>12 MR. GOULDER: Objection. Vague and assumes</p> <p>13 facts not in evidence.</p> <p>14 THE WITNESS: So the one point I'll note with</p> <p>15 your question and answer, is that there is a vague term</p> <p>16 used in the preface to your question, which is the term</p> <p>17 "common ownership."</p> <p>18 If you unpack that term to say</p> <p>19 common ownership under all the relevant regs and</p> <p>20 statutes, then the answer to your question is yes.</p> <p>21 BY MR. HENGVELD:</p> <p>22 Q Have you seen an ownership chart of Darren Chaffee's</p> <p>23 ownership interests in any entities that he owns?</p> <p>24 A So I have seen various charts. I don't know -- I may,</p> <p>25 or may not, have seen a chart that purported to be a</p>	<p style="text-align: right;">Page 51</p> <p>1 Jaffe, only Darren and Neal could have provided an</p> <p>2 organizational chart.</p> <p>3 Q Thank you.</p> <p>4 A Sure.</p> <p>5 Q With regard to your opinion in Exhibit 56, page 8,</p> <p>6 Subsection D, where it states:</p> <p>7 Once it arises, controlled group liability,</p> <p>8 under Title IV of ERISA, cannot be escaped through</p> <p>9 corporate divestiture or reorganization.</p> <p>10 A Um-hmm.</p> <p>11 Q Do you -- first of all, do you see that?</p> <p>12 A Yes, I do.</p> <p>13 Q A pension withdrawal liability has not been assessed</p> <p>14 against LSI, or LSI Holdings of America, LLC, or</p> <p>15 SSL Assets; correct?</p> <p>16 A I don't know.</p> <p>17 Q Well, only the trustees of the Pension Fund can assess</p> <p>18 pension withdrawal liability; correct?</p> <p>19 A That's my understanding.</p> <p>20 Q And you've not seen any evidence, in this case, that the</p> <p>21 trustees of the Pension Fund have assessed</p> <p>22 pension withdrawal liability; correct?</p> <p>23 A I don't believe I have, no.</p> <p>24 Q Do you agree that the evading and avoiding section of</p> <p>25 ERISA does not prevent a business from changing its</p>
<p style="text-align: right;">Page 50</p> <p>1 complete chart of Darren's ownerships.</p> <p>2 The one I had focused on is just an ownership</p> <p>3 chart of SSL.</p> <p>4 Q Is it the attorney's duty to create an organizational</p> <p>5 chart for the client?</p> <p>6 A Of course not. The attorney's duty is to acquire a full</p> <p>7 understanding of the network of ownership interests.</p> <p>8 Q Do you agree that only the client can provide the</p> <p>9 ownership interests for the attorney to assess?</p> <p>10 A Well, that depends on the facts. I suppose, in some</p> <p>11 cases, it might be public. But in -- in this case, I</p> <p>12 have no reason to believe Jaffe could have produced the</p> <p>13 organizational chart without having asked the</p> <p>14 information necessary to produce it, so no.</p> <p>15 Q That is, so, yes, you agree that --</p> <p>16 A In this case --</p> <p>17 Q -- only Darren Chaffee or Neal Cohen could have provided</p> <p>18 the ownership interests, or their -- any of --</p> <p>19 interest -- or entities that they had an interest in?</p> <p>20 A Yeah. So I'm just trying to make the question more</p> <p>21 precise, so I can answer it.</p> <p>22 I think your original question was "only the</p> <p>23 client" can do that, and I -- so precisely rephrasing</p> <p>24 the question, and answering it:</p> <p>25 In this case, between Darren and Neal and</p>	<p style="text-align: right;">Page 52</p> <p>1 ownership structure, so long as there are -- are</p> <p>2 good-faith nonwithdrawal liability reasons for making</p> <p>3 the changes?</p> <p>4 A I absolutely do not agree with that statement. The way</p> <p>5 you phrased that statement is, so long as there are</p> <p>6 other reasons. It restates the question as though it's</p> <p>7 a test of whether it's a sham that states the tax sham</p> <p>8 transaction question.</p> <p>9 The test, in this case, is whether any</p> <p>10 reason -- any of the reasons -- includes escaping</p> <p>11 liability. So the mere fact that you can identify one</p> <p>12 or more other reasons does not allow you to do this</p> <p>13 transaction. So I completely disagree with the way you</p> <p>14 stated it.</p> <p>15 Q Well, just because there is the evading and avoiding</p> <p>16 section of ERISA, that doesn't prevent a business from</p> <p>17 changing its ownership structure if the reason for</p> <p>18 changing it isn't to avoid pension withdrawal liability;</p> <p>19 correct?</p> <p>20 A Correct. If it's a complete, unanticipated side effect,</p> <p>21 then it doesn't prevent it, and that's a question of</p> <p>22 fact.</p> <p>23 Q And the fund has the burden to prove that the change in</p> <p>24 ownership was intended to evade or avoid</p> <p>25 pension withdrawal liability; correct?</p>

ANDREW W. STUMPF
COHEN vs JAFFE

February 09, 2017
53-56

<p style="text-align: right;">Page 53</p> <p>1 A I don't remember the burden of proof. I don't know.</p> <p>2 Q Would you agree with me that businesses change their</p> <p>3 ownership structure all the time for various reasons</p> <p>4 that are not related to pension withdrawal liability?</p> <p>5 A Yes, I would.</p> <p>6 Q Once pension withdrawal liability is assessed -- that</p> <p>7 is, by the fund -- can the sponsors of the plan</p> <p>8 negotiate to reduce the amount of that pension</p> <p>9 withdrawal liability?</p> <p>10 A My understanding is yes.</p> <p>11 Q Have you ever been involved in such a negotiation?</p> <p>12 A I have not.</p> <p>13 Q Have you ever had a client that has been assessed</p> <p>14 pension withdrawal liability?</p> <p>15 A I have not. Oh, no, I'm sorry. I have. I have had a</p> <p>16 client that's been assessed pension withdrawal</p> <p>17 liability.</p> <p>18 Q And have you, in that situation, been asked to attempt</p> <p>19 to reduce the pension withdrawal liability?</p> <p>20 A I have.</p> <p>21 Q And what steps did you take to attempt to reduce that</p> <p>22 pension withdrawal liability?</p> <p>23 A I negotiated with the trustees.</p> <p>24 Q And were you able to reduce the amount of pension</p> <p>25 withdrawal liability in that case?</p>	<p style="text-align: right;">Page 55</p> <p>1 the pension withdrawal liability amount?</p> <p>2 A I don't know. I have no experience with that.</p> <p>3 Q Are there any other factors that the trustees of the</p> <p>4 fund take into consideration in negotiating down the</p> <p>5 amount of pension withdrawal liability?</p> <p>6 A So --</p> <p>7 MR. GOULDER: Object to form and foundation.</p> <p>8 THE WITNESS: I just don't know.</p> <p>9 BY MR. HENGVELD:</p> <p>10 Q Do you have any opinions, in this case, about whether</p> <p>11 SSL Assets has a duty, or responsibility, to attempt to</p> <p>12 mitigate any alleged pension withdrawal liability that</p> <p>13 might be assessed?</p> <p>14 A I don't know.</p> <p>15 Q Do you agree that Darren Chaffee and Neal Cohen are not</p> <p>16 subject to pension withdrawal liability as a result of</p> <p>17 the LSI acquisition?</p> <p>18 A I can't --</p> <p>19 MR. GOULDER: Objection. Calls for a legal</p> <p>20 conclusion.</p> <p>21 THE WITNESS: Yeah, I can't -- I just don't</p> <p>22 know. I'd have to analyze it. That's not something</p> <p>23 I've analyzed.</p> <p>24 BY MR. HENGVELD:</p> <p>25 Q Have you been asked to analyze whether this particular</p>
<p style="text-align: right;">Page 54</p> <p>1 A Yes, I was.</p> <p>2 Q By what percentage were you able to reduce the</p> <p>3 pension withdrawal liability?</p> <p>4 A That, I just don't remember. It was probably on the</p> <p>5 order of 10 percent.</p> <p>6 Q How was it that you were able to negotiate down that</p> <p>7 amount of pension withdrawal liability?</p> <p>8 A I'm not quite sure what you're asking.</p> <p>9 Q What arguments did you make, on behalf of your client,</p> <p>10 to reduce the amount of --</p> <p>11 A So --</p> <p>12 Q -- pension withdrawal liability?</p> <p>13 A So this is one client -- and this is probably six years</p> <p>14 ago, so I'm -- and I'm just bringing it to mind, and I'm</p> <p>15 having trouble remembering exactly what our argument</p> <p>16 was.</p> <p>17 Oh, I think it actually had to do with the</p> <p>18 limitations period. I think we argued that they had</p> <p>19 possibly missed the period for assessing the liability.</p> <p>20 Q And what is the statute of limitations period with</p> <p>21 regard to the fund assessing pension withdrawal</p> <p>22 liability?</p> <p>23 A I'm sorry. I don't remember.</p> <p>24 Q Do you know whether the trustees of the fund take an</p> <p>25 ability to pay into consideration when negotiating down</p>	<p style="text-align: right;">Page 56</p> <p>1 multiemployer pension plan could be deemed to be a</p> <p>2 construction industry plan?</p> <p>3 A I have -- the -- the -- the question has been raised</p> <p>4 with me by Stinson, and I have briefly looked at it.</p> <p>5 Q And when was that raised --</p> <p>6 A It was --</p> <p>7 Q -- first raised with you?</p> <p>8 A It was first raised after my report. I'd say maybe late</p> <p>9 December, or early January. I don't remember exactly</p> <p>10 when.</p> <p>11 Q And what were you specifically asked to do regarding</p> <p>12 whether this is a construction industry plan?</p> <p>13 A I was asked for a quick view as to whether I thought</p> <p>14 that that exception might apply.</p> <p>15 Q Did you form a conclusion as to whether that exception</p> <p>16 might apply?</p> <p>17 A I formed a preliminary conclusion that it does not</p> <p>18 apply.</p> <p>19 Q And what is that conclusion based upon?</p> <p>20 A So my understanding is that the construction industry</p> <p>21 exception is defined by reference to caselaw under labor</p> <p>22 law, and I believe it's the LMRA, but I'm not certain of</p> <p>23 that recollection.</p> <p>24 But my understanding is that the caselaw --</p> <p>25 the definition of construction industry is relevant for</p>

ANDREW W. STUMPF
COHEN vs JAFFE

February 09, 2017
57-60

<p style="text-align: right;">Page 57</p> <p>1 those purposes under labor law, and has been the subject</p> <p>2 of cases defining what is a construction industry</p> <p>3 company, and that the test is something along the lines</p> <p>4 of the company's work being predominantly done on the</p> <p>5 construction job site.</p> <p>6 So in the case of new building construction</p> <p>7 the new work is predominantly done on the job site. And</p> <p>8 so my preliminary understanding of both the rule and the</p> <p>9 facts here, is that testimony applied here, because too</p> <p>10 much of this company's work was not done at the</p> <p>11 construction site.</p> <p>12 Q And what do you base that conclusion on in terms of the</p> <p>13 facts?</p> <p>14 A My understanding, my very brief understanding, that I</p> <p>15 could draw from the documents that this -- and I think</p> <p>16 that Stinson has told me -- that this company</p> <p>17 manufactures shelving and cabinetry, and does some</p> <p>18 installation, but my understanding is not enough to meet</p> <p>19 the test under this caselaw.</p> <p>20 Q What would be the impact if this were to be deemed a</p> <p>21 construction industry plan?</p> <p>22 A Then the -- my understanding -- and this is not an area</p> <p>23 that I've spent a lot of time in -- is that the</p> <p>24 withdrawal liability would not apply.</p> <p>25 Q Going back to Exhibit No. 56 --</p>	<p style="text-align: right;">Page 59</p> <p>1 about indirect ownership of interests held by</p> <p>2 Messrs. Cohen and Chaffee would have had to be elicited</p> <p>3 from these individuals by Jaffe, Raitt, in order</p> <p>4 correctly to characterize the risk of triggering</p> <p>5 potential controlled group liability on the part of SSL</p> <p>6 as a result of the acquisition.</p> <p>7 Do you see that?</p> <p>8 A Yes.</p> <p>9 Q Do you agree with me that that information about the</p> <p>10 indirect ownership interests, owned by Cohen and Jaffe,</p> <p>11 could be elicited orally?</p> <p>12 A Yes.</p> <p>13 Q When you say "indirect ownership interests," what are</p> <p>14 you referring to, in particular?</p> <p>15 A Any indirect ownership would have to be elicited. In</p> <p>16 this case, what turned out to be -- what turned out to</p> <p>17 exist, and be relevant, was indirect ownership through</p> <p>18 intervening companies.</p> <p>19 Other types of indirect ownership that would</p> <p>20 have to be asked about, as well, turned out not to be</p> <p>21 relevant here.</p> <p>22 Q Let me ask you about both. What are you specifically</p> <p>23 referring to with regard to the -- what you deemed as to</p> <p>24 be "intervening companies"?</p> <p>25 A So, for example, in the case of SSL, neither</p>
<p style="text-align: right;">Page 58</p> <p>1 A Yeah.</p> <p>2 Q -- page number 10, paragraph number 4 on that page,</p> <p>3 starts with "Analysis of the ownership structure."</p> <p>4 Do you see that?</p> <p>5 A I do.</p> <p>6 Q Do you know what documents existed at the time that</p> <p>7 Jaffe rendered its advice on controlled group liability</p> <p>8 that you believe Jaffe should have had before rendering</p> <p>9 that advice?</p> <p>10 A Do I know what documents exist that Jaffe should have</p> <p>11 had? Um --</p> <p>12 Q And -- sorry -- specifically with regard to Exhibit --</p> <p>13 sorry -- paragraph number 4 on page 10, and that is your</p> <p>14 reference to the analysis of the ownership structure?</p> <p>15 A Um-hmm.</p> <p>16 Q I guess my more precise question is:</p> <p>17 What, specifically, are you referring to of</p> <p>18 the analysis of ownership structure?</p> <p>19 A So I'm referring to the facts of the ownership</p> <p>20 structure, what they owned. I'm not actually referring</p> <p>21 to a document. I don't know what documents existed.</p> <p>22 I'm referring to the facts, as they existed,</p> <p>23 and analysis of those facts should have led to that</p> <p>24 conclusion.</p> <p>25 Q Exhibit 56, page 10, paragraph 6 on that page: Information</p>	<p style="text-align: right;">Page 60</p> <p>1 Mr. Chaffee, nor Mr. Cohen, owned an interest in SSL.</p> <p>2 Mr. Chaffee and Mr. Cohen each owned interests in other</p> <p>3 entities, which owned interests in SSL.</p> <p>4 That is indirect ownership, and so you would</p> <p>5 need to elicit information about indirect ownership in</p> <p>6 order to be able to make this analysis.</p> <p>7 Q In your prior answer you mentioned indirect ownership</p> <p>8 that you said turned out not to be relevant. What are</p> <p>9 you referring to in that --</p> <p>10 A So --</p> <p>11 Q -- answer?</p> <p>12 A So, for example, the attribution rules are fairly broad,</p> <p>13 and if, for example, a family member owns stock in a</p> <p>14 company, that may have to be attributed to you, if we're</p> <p>15 asking about you.</p> <p>16 So the question, sort of, goes to how precise</p> <p>17 one has to be when one asks about ownership, because of</p> <p>18 the potential for indirect ownership from many different</p> <p>19 sources, only one of which turned out to be relevant</p> <p>20 here.</p> <p>21 But had the precise question been asked, it</p> <p>22 would have elicited that, as well as all the other</p> <p>23 possible relevant forms of ownership.</p> <p>24 Q And are you referring to something specifically with</p> <p>25 regard to Neal Cohen or Darren Chaffee's interests, or</p>

ANDREW W. STUMPF
COHEN vs JAFFE

February 09, 2017
61-64

<p style="text-align: right;">Page 61</p> <p>1 their spouses' interests, in this case?</p> <p>2 A No. No. I'm -- here's what I'm saying -- I'm saying</p> <p>3 that when you're trying to analyze, or when you're</p> <p>4 asking someone -- well, strike that.</p> <p>5 When you're trying to answer for someone,</p> <p>6 whether they are part of a controlled group, because of</p> <p>7 the way the attribution rules work, you have to ask a</p> <p>8 number of very precise questions, because it can turn</p> <p>9 out that stock that you wouldn't have thought about,</p> <p>10 might be taken into account, for example, your family</p> <p>11 members, so you have to ask all these precise questions.</p> <p>12 In response to your question, in this case it</p> <p>13 turned out that none of that was relevant, except for</p> <p>14 the indirect part. But the standard -- the standard of</p> <p>15 care is that you have to ask all of those, because you</p> <p>16 don't know, in advance, that those are not going to turn</p> <p>17 out to be relevant.</p> <p>18 Q Turning your attention to paragraph -- Exhibit 56,</p> <p>19 page 11, paragraph 1 on that page, what documents and</p> <p>20 testimony are you referring to, specifically, when</p> <p>21 you're talking about the question asked by Jaffe, Raitt,</p> <p>22 and that Mr. Cohen answered in the negative?</p> <p>23 A I believe this is all from Mr. Weiss' deposition, but I</p> <p>24 think it's also something, to this effect, in some of</p> <p>25 the other Jaffe lawyers' depositions.</p>	<p style="text-align: right;">Page 63</p> <p>1 ask Mr. Chaffee, for example, "Do you own any SSL</p> <p>2 equity?" under one of the meanings of "common ownership"</p> <p>3 the answer is, no, Mr. Chaffee does not own any stock in</p> <p>4 SSL.</p> <p>5 So, as a result, the question is sufficiently</p> <p>6 vague in the sense that it can be interpreted reasonably</p> <p>7 in a way that would allow a negative answer, without</p> <p>8 having eliminated the possibility that -- that the</p> <p>9 regulation's attribution rules have been met, that one</p> <p>10 would have to follow up.</p> <p>11 There's no way to decide, on the basis of that</p> <p>12 question, on whether you have a controlled group or not,</p> <p>13 without having stated, precisely, what one means by the</p> <p>14 vague term "common ownership."</p> <p>15 Q Well, do you agree with me that as an ERISA lawyer, if</p> <p>16 you're told that there is no common ownership between</p> <p>17 two clients that are acquiring an entity with a</p> <p>18 multiemployer pension plan, you would not need to do any</p> <p>19 further analysis with regard to whether there was</p> <p>20 controlled group liability?</p> <p>21 A So two -- two things. So, first, you again just used</p> <p>22 the word "common ownership." So everything I said in my</p> <p>23 previous answer, it's too vague. But you prefaced it by</p> <p>24 saying "as an ERISA lawyer."</p> <p>25 So if, by that, you meant if someone said to</p>
<p style="text-align: right;">Page 62</p> <p>1 Q So you're not necessarily referring to the document,</p> <p>2 you're just referring to the testimony by Mr. Weiss, or</p> <p>3 by the other Jaffe attorneys?</p> <p>4 A Yeah. I guess in the same documents. I guess I had the</p> <p>5 depositions in paper form, so...</p> <p>6 Q Okay. And is it actually a question that Mr. Cohen</p> <p>7 answered, or is it a question that Mr. Chaffee answered?</p> <p>8 A Oh, you're right. This is probably a mistake in my</p> <p>9 report, because I think that Mr. Weiss' deposition is</p> <p>10 about a conversation with Mr. Chaffee, and not</p> <p>11 Mr. Cohen.</p> <p>12 Q Do you agree with me that if there is, indeed, no common</p> <p>13 ownership of entities between Mr. Chaffee and Mr. Cohen,</p> <p>14 that, then, there is no further analysis that needs to</p> <p>15 be done regarding controlled group liability for</p> <p>16 brother-sister tests?</p> <p>17 A I can't agree with that for the reason that the term</p> <p>18 "common ownership" is too vague and susceptible with</p> <p>19 different meanings, one of which would allow -- at least</p> <p>20 one of which would allow the answer to be positive, and</p> <p>21 the others which -- others of which would allow it to be</p> <p>22 negative.</p> <p>23 Q Well, how so would it be negative?</p> <p>24 A So ownership can have a number of different meanings,</p> <p>25 and one of the possible meanings of ownership -- if I</p>	<p style="text-align: right;">Page 64</p> <p>1 me, "Assume that for purposes of ERISA, there is no</p> <p>2 common ownership," then the answer is yes.</p> <p>3 But if they just say "common ownership" --</p> <p>4 whether I'm an ERISA lawyer, or anyone else -- the</p> <p>5 answer is no. I would require more analysis.</p> <p>6 Q Have you formed any specific opinions with regard to</p> <p>7 Deb Baughman's services in this case?</p> <p>8 A No.</p> <p>9 Q Are your opinions and criticisms, in this case, limited</p> <p>10 then to how Mr. Weiss obtained the information as to</p> <p>11 what ownership interests Darren Chaffee and Neal Cohen</p> <p>12 had?</p> <p>13 A Here's --</p> <p>14 MR. GOULDER: Object to the form.</p> <p>15 Go ahead.</p> <p>16 THE WITNESS: Here's how I've analyzed it.</p> <p>17 I've looked at all of the communications from the firm</p> <p>18 to the client, without regard to who was making the</p> <p>19 communication, almost as though it were one person.</p> <p>20 So I'm not making any distinctions about any</p> <p>21 individual lawyer at Jaffe. I'm saying that if you take</p> <p>22 Jaffe as the lawyer here, and assume that these</p> <p>23 questions were asked as stated, and answered as stated,</p> <p>24 that the conclusions I've drawn are what I've drawn.</p> <p>25 MR. HENGVELD: Let's take a quick break.</p>

ANDREW W. STUMPF
COHEN vs JAFFE

February 09, 2017
65-68

<p style="text-align: right;">Page 65</p> <p>1 (Whereupon a break was taken 2 from 9:46 a.m. to 9:55 a.m.) 3 BY MR. HENGVELD: 4 Q Going back to Exhibit No. 56, page 11, 5 paragraph number 3 on that page. Do you see that 6 paragraph? 7 A Yes, I do. 8 Q In the last sentence of paragraph 3, you state: 9 That, however, raises the question of whether 10 it met the standard of practice in such a context simply 11 to have asked, of a client, "Do you have any common 12 ownership of another entity?" 13 Do you see that? 14 A Yes, I do. 15 Q If a client is familiar with the attribution rules, and 16 their understanding of their ownership interests, and 17 all the entities in which they have an interest, do you 18 agree that a lawyer asking whether -- or asking the 19 client to list all the entities in which he has an 20 ownership interest in common with another acquiror, 21 meets the standard of care? 22 A So the way you asked the question was, if -- if the 23 client has an understanding of the attribution rules. 24 And so I would answer your question, yes, with 25 the following amendment: If the client understands the</p>	<p style="text-align: right;">Page 67</p> <p>1 Q -- of care? 2 A It's too vague. 3 Q The word "own" is vague, in your opinion? 4 A It is. 5 And again, I think especially, in this case, 6 where you have someone who has not necessarily ERISA 7 sophistication, but some business and transactional 8 sophistication, and has focused, in the past, for 9 example, on the fact that there are intervening 10 entities, and it's been important to him -- for whatever 11 reason -- in the past, that there is an intervening 12 entity, such that he is able to answer the question, 13 "Do you own X?" in the negative, even though he owns an 14 intervening entity that owns X. 15 It's again -- when you ask a question -- as a 16 lawyer, in this context, when you ask a question that's 17 capable of a truthful affirmative answer, that if 18 understood a certain way will not have given you the 19 information you need, then you have not met the standard 20 of care in helping that client figure out whether 21 they've got a controlled group. 22 Q In your opinion, what question should have been asked, 23 by the Jaffe attorneys, in evaluating the potential for 24 controlled group liability in this case? 25 A Right. There's effectively two ways to have done it,</p>
<p style="text-align: right;">Page 66</p> <p>1 attribution rules, and the lawyer knows that the client 2 understands the attribution rules, then to -- to get a 3 response saying, "Do you have any common ownership of 4 another entity?" where the lawyer knows that the client 5 is understanding that, in the context of those 6 attribution rules, that would meet the standard of care. 7 Q What about a lawyer asking a simple question, "What 8 businesses do you own in common with the other 9 acquiror?" 10 Does that meet the standard of practice for 11 determining whether there is a basis upon which to 12 conclude that there might be potential controlled group 13 liability? 14 A No. The words "in common" are fatally vague. They 15 permit an answer that would say, no, it does not provide 16 the lawyer the information they need. 17 Q What about the question, "Do you own any businesses with 18 the other acquiror?" 19 A Again -- 20 Q Does that -- 21 A -- that's -- 22 Q -- meet the -- 23 A -- too -- 24 Q -- standard -- 25 A -- vague.</p>	<p style="text-align: right;">Page 68</p> <p>1 and probably both are -- are the best way to do it. 2 One is to effectively summarize or recite the 3 attribution rules, and say, taking into account any 4 direct or indirect ownership, as well as any other 5 attributed ownership, and here are the lists of 6 attributed ownership -- for example, family members -- 7 does it turn out that if you drew the ownership lines, 8 you would have an indirect, or direct, or attributed 9 ownership interest in a company in which Mr. Cohen also 10 had a direct or indirect or attributed ownership? 11 The other way to do it, which is conceptually 12 equivalent -- and again, I think, works better, given 13 the human brain -- is to ask for an organizational chart 14 that shows boxes for all the entities with lines showing 15 ownership interest. 16 But even there, you would have to note that 17 the organizational chart would have to be supplemented 18 to show any of these attributed ownership rules that I 19 mentioned. 20 Q And you agree that that question could be asked orally? 21 A Yes. 22 Q You indicated, in your answer, that that's the best way 23 to do it. Do you believe that that's what the standard 24 of practice requires? 25 A What I -- what I said, in my answer, was the best way</p>

ANDREW W. STUMPF
COHEN vs JAFFE

February 09, 2017
69-72

<p style="text-align: right;">Page 69</p> <p>1 would have been to do it both ways. The standard of</p> <p>2 practice would require that you do it at least one of</p> <p>3 the other way.</p> <p>4 Q And what, specifically, are you referring to that</p> <p>5 formulates your opinion that that is what the standard</p> <p>6 of practice is?</p> <p>7 A Because there's no other way to analyze control groups</p> <p>8 properly and correctly. There's no other way to analyze</p> <p>9 control group existence, correctly, other than with all</p> <p>10 of the facts that are required to be taken into account</p> <p>11 by the tests. There's no other way to get the necessary</p> <p>12 information.</p> <p>13 Q Are you basing your opinion regarding the standard of</p> <p>14 practice, then, on your particular experience in</p> <p>15 practicing law --</p> <p>16 A Well --</p> <p>17 Q -- or are you basing it on a statute, Model Rules of</p> <p>18 Professional Conduct, Michigan Rules of Professional</p> <p>19 Conduct, caselaw, or some other source?</p> <p>20 A I'm basing this answer, I guess, in response to this</p> <p>21 question, on two things.</p> <p>22 One, the logical requisite that you can't</p> <p>23 answer the question of whether it's a controlled group,</p> <p>24 without having gotten all this information. So just</p> <p>25 sheer logic, you have to have acquired certain</p>	<p style="text-align: right;">Page 71</p> <p>1 previous page 11 -- the last sentence in paragraph 5</p> <p>2 says:</p> <p>3 Under such circumstances a very thorough,</p> <p>4 direct set of questions and requests for detailed</p> <p>5 ownership information was called for.</p> <p>6 Do you see that?</p> <p>7 A Yes, I do.</p> <p>8 Q The direct set of questions and requests do not have to</p> <p>9 be in writing; correct?</p> <p>10 A Correct.</p> <p>11 Q Exhibit 56, page 12, paragraph 7 on that page, you state</p> <p>12 that the attorney has to explain the existence and</p> <p>13 summarize the general outlines of the ownership</p> <p>14 attribution rules under the regulations; correct?</p> <p>15 A Yes.</p> <p>16 Q Is that true even in the circumstances that the client</p> <p>17 knows of the attribution rules?</p> <p>18 A Not if -- you stated the question if the client knows of</p> <p>19 the attribution rules. That doesn't help at all.</p> <p>20 The client would need to know, exhaustively,</p> <p>21 the content of the attribution rules, and you would have</p> <p>22 to know that. If you, the lawyer, know that the client</p> <p>23 has an exhaustive understanding of the content of the</p> <p>24 attribution rules, then, as we've said -- I think I've</p> <p>25 already said -- then I wouldn't say that the standard of</p>
<p style="text-align: right;">Page 70</p> <p>1 quantitative information to be able to answer this</p> <p>2 question under the statute.</p> <p>3 I am also -- although, I think that would be</p> <p>4 the same answer, even if this was the first time I'd</p> <p>5 ever seen this question, you'd just look at the question</p> <p>6 and you'd say, "What do I need to answer it?"</p> <p>7 But it's also based on all of the transactions</p> <p>8 I've been involved in, and all the private equity</p> <p>9 clients I've ever advised, all the investment companies</p> <p>10 I've ever advised, knowing that they tend to have these</p> <p>11 complicated networks, companies with ownership going in</p> <p>12 different directions, that you have to be particularly</p> <p>13 inclusive.</p> <p>14 So it's all of those things, but, ultimately,</p> <p>15 it's just a logical answer. You can't -- you cannot</p> <p>16 answer this statutory question without having elicited</p> <p>17 all of this information.</p> <p>18 Q If the information elicited about ownership -- either</p> <p>19 direct or indirect -- reflects that there is no direct</p> <p>20 or indirect common ownership between the two acquirors,</p> <p>21 would you agree with me that that would end the inquiry</p> <p>22 regarding controlled group liability?</p> <p>23 A Yes, I would.</p> <p>24 Q Exhibit 56, page 12, the last sentence of paragraph 5 --</p> <p>25 which was a continuation of the paragraph from the</p>	<p style="text-align: right;">Page 72</p> <p>1 care requires that you repeat those to the client. But</p> <p>2 knowing of them, doesn't help at all.</p> <p>3 Q In your opinion, would most certified public accountants</p> <p>4 know the attribution rules?</p> <p>5 MR. GOULDER: Object to form and foundation.</p> <p>6 THE WITNESS: And I'll answer that, in my</p> <p>7 opinion, it would be an extremely rare CPA who would</p> <p>8 know the attribution rules that apply for purposes of</p> <p>9 ERISA liability.</p> <p>10 BY MR. HENGVELD:</p> <p>11 Q Well, those attribution rules we've already covered,</p> <p>12 though, arise out of the tax code; correct?</p> <p>13 A So if you told a CPA you had to work on corporate tax</p> <p>14 returns and controlled group returns, and you knew that</p> <p>15 the CPA had to work on controlled group returns, and you</p> <p>16 told the CPA, "For purposes of this ERISA-controlled</p> <p>17 group analysis, we have to apply all of the same</p> <p>18 controlled group rules that you've had to apply for</p> <p>19 purposes of the controlled group returns you've worked</p> <p>20 on," then I think you could probably be safe.</p> <p>21 Q Let's be more simplistic on that. You would expect a</p> <p>22 CPA to understand the concept of pass-through entities;</p> <p>23 correct?</p> <p>24 A Pass-through entities has absolutely no relevance here.</p> <p>25 So the attribution rules would apply whether we were</p>

ANDREW W. STUMPF
COHEN vs JAFFE

February 09, 2017
73-76

<p style="text-align: right;">Page 73</p> <p>1 talking about an LLC, or a C Corp., or a partnership.</p> <p>2 And, moreover, as I've said before, it turned</p> <p>3 out not to matter here, but, actually, to have asked the</p> <p>4 question, you would have needed to apply all the other</p> <p>5 attribution rules, which are specific to these</p> <p>6 attribution rules, like family members, and so forth.</p> <p>7 So the pass-through rules apply not for</p> <p>8 purposes of defining a control group, even under the</p> <p>9 tax code. The pass-through rules apply for purposes of</p> <p>10 making the owner essentially reflect all of the</p> <p>11 tax income and expenses of the entity, itself.</p> <p>12 It has nothing to do, even on the tax side,</p> <p>13 with defining controlled group.</p> <p>14 Q The concept is similar -- the concept -- strike that.</p> <p>15 The concept of a pass-through entity is the</p> <p>16 concept of attribution?</p> <p>17 A For one particular context. For other particular</p> <p>18 contexts it is an actual, effective legal barrier.</p> <p>19 And my recollection of the depositions here is</p> <p>20 that Mr. Chaffee, at least, was aware -- I'm not sure he</p> <p>21 was aware of the reasons -- but he was aware that there</p> <p>22 was an intermediate entity that had substance, and that</p> <p>23 that existence of the substantive intermediate entity</p> <p>24 had importance, completely, without regard to the</p> <p>25 pass-through of tax attributes.</p>	<p style="text-align: right;">Page 75</p> <p>1 definitively, but I don't remember ever creating an</p> <p>2 organizational chart for Neal.</p> <p>3 Q Exhibit 56, page 12, paragraph 8, talks about subtleties</p> <p>4 implicit in the question about, "Do you have any other</p> <p>5 common ownership?"</p> <p>6 Do you see that?</p> <p>7 A Yes, I do.</p> <p>8 Q What specific subtleties are you referring to implicit</p> <p>9 in that question?</p> <p>10 A Most of what we've been talking about, and particularly</p> <p>11 the attribution rules, and the indirect ownership</p> <p>12 rules -- well, strike the "and the indirect ownership</p> <p>13 rules."</p> <p>14 It all really falls under the attribution</p> <p>15 rules.</p> <p>16 Q Again, nothing beyond what we've --</p> <p>17 A Right.</p> <p>18 Q -- what you've already testified to --</p> <p>19 A Right.</p> <p>20 Q -- regarding the --</p> <p>21 A Right.</p> <p>22 Q -- attribution rules?</p> <p>23 A Right.</p> <p>24 Q On page 13 of your report, paragraph 2, it talks about</p> <p>25 there being amendments or additions to the report that</p>
<p style="text-align: right;">Page 74</p> <p>1 Q Going back to Exhibit 56, paragraph 6, on page 12, in</p> <p>2 there you state that Jaffe, Raitt should have asked</p> <p>3 specific follow-up questions necessary to confirm the</p> <p>4 existence of common ownership. Do you see that?</p> <p>5 A Paragraph 6? Oh, yes, I see it.</p> <p>6 MR. GOULDER: Paragraph six.</p> <p>7 THE WITNESS: I see it, yes. I'm sorry.</p> <p>8 MR. HENGVELD: That's okay.</p> <p>9 BY MR. HENGVELD:</p> <p>10 Q What specific follow-up questions do you believe</p> <p>11 Jaffe, Raitt should have asked that the lawyers in that</p> <p>12 firm did not ask?</p> <p>13 A Here's the main one:</p> <p>14 Here are the attribution rules. I'll list</p> <p>15 them, taking these into account you have common</p> <p>16 ownership.</p> <p>17 Q Do you agree that the advice that Jaffe, Raitt rendered</p> <p>18 to Darren Chaffee and Neal Cohen was based upon the</p> <p>19 information that they -- Darren Chaffee and</p> <p>20 Neal Cohen -- gave to the Jaffe attorneys?</p> <p>21 A I have to answer that question, yes.</p> <p>22 Q Have you ever created an organizational chart for a</p> <p>23 client with regard to the acquisition of an -- of an</p> <p>24 entity?</p> <p>25 A Well, it's been a long time, so it's hard to say,</p>	<p style="text-align: right;">Page 76</p> <p>1 you may develop if there's new evidence, et cetera.</p> <p>2 Are all of the opinions, to which you</p> <p>3 testified about today, the sum total and entirety of the</p> <p>4 opinions that you have formulated in this case?</p> <p>5 MR. GOULDER: Object to the form of the</p> <p>6 question. His opinions are set forth in the report --</p> <p>7 THE WITNESS: Um --</p> <p>8 MR. GOULDER: -- and his testimony today.</p> <p>9 THE WITNESS: You know, I'll try to answer it,</p> <p>10 but it's a really hard question, because you're asking</p> <p>11 me all the opinions I might have -- like I've formed a</p> <p>12 number of opinions about this room since I've been here.</p> <p>13 I mean, you know, I --</p> <p>14 MR. HENGVELD: Let me rephrase the question.</p> <p>15 BY MR. HENGVELD:</p> <p>16 Q Are there any other opinions that you have that relate</p> <p>17 to this case, other than those set forth in Exhibit 56,</p> <p>18 which is your report, or that you have testified about</p> <p>19 today?</p> <p>20 A None that are relevant to the scope of my engagement,</p> <p>21 but it's such -- I'm sorry -- it's just such an</p> <p>22 incredibly broad question, "Have I formed any opinions?"</p> <p>23 It's, like, opinions, like, there's lots of</p> <p>24 people doing transactional work. I mean, there's just</p> <p>25 so many opinions. You asked how many opinions have I</p>

ANDREW W. STUMPF
COHEN vs JAFFE

February 09, 2017
77-80

<p style="text-align: right;">Page 77</p> <p>1 formed about the case.</p> <p>2 It's interesting that this investment bank</p> <p>3 exists in New York, and does business. There's lots of</p> <p>4 opinions I formed. If the -- but if the question is:</p> <p>5 Have I -- is this the sum total of the</p> <p>6 opinions I have formed about whether this law firm met</p> <p>7 the standard of care, the answer is yes.</p> <p>8 MR. HENGVELD: Thank you.</p> <p>9 Give me a moment --</p> <p>10 THE WITNESS: Okay.</p> <p>11 MR. HENGVELD -- to look over my notes.</p> <p>12 THE WITNESS: Sure.</p> <p>13 (Momentarily off the record.)</p> <p>14 BY MR. HENGVELD:</p> <p>15 Q Did you research any caselaw, or secondary sources, in</p> <p>16 order to prepare your report, or provide your opinions</p> <p>17 in this case?</p> <p>18 A Caselaw, or secondary sources, yes.</p> <p>19 Q What issues or topics --</p> <p>20 A I think --</p> <p>21 Q -- did you research caselaw, or secondary sources, in</p> <p>22 order to prepare your report?</p> <p>23 A I think I cited them in here. So I cited -- just</p> <p>24 flipping through my report -- I cited some secondary</p> <p>25 sources on page 5, under B(1), and I cited a case on</p>	<p style="text-align: right;">Page 79</p> <p>1 relevant or critical to your opinions?</p> <p>2 A I guess I list the most important as being the early</p> <p>3 e-mail, in April of 2013, but also Mr. Weiss' entire</p> <p>4 deposition, and Mr. Chaffee's entire deposition. Those</p> <p>5 three things are more important, probably, than anything</p> <p>6 else, for my conclusions.</p> <p>7 Q And, for the record, that e-mail was the Exhibit 7 that</p> <p>8 we looked at --</p> <p>9 A Yes.</p> <p>10 Q -- today?</p> <p>11 A Yeah.</p> <p>12 Q You indicated that you reviewed the report of</p> <p>13 Jordan Schreier?</p> <p>14 A Yes.</p> <p>15 Q Do you have any disagreements with the content of what</p> <p>16 is in his report?</p> <p>17 MR. GOULDER: Object to the form. Overly</p> <p>18 broad.</p> <p>19 THE WITNESS: Yes, I do.</p> <p>20 BY MR. HENGVELD:</p> <p>21 Q As you sit here today, is there anything specific that</p> <p>22 stands out as being objectionable in his report?</p> <p>23 MR. GOULDER: And the record should show that</p> <p>24 the report is not in front of the witness. If you want</p> <p>25 a detailed answer, I think that would be the fair thing</p>
<p style="text-align: right;">Page 78</p> <p>1 page 8, under Section D(2), and then on page 9, under</p> <p>2 E(1), I cited some secondary sources.</p> <p>3 MR. GOULDER: Have you finished your answer?</p> <p>4 THE WITNESS: Yes.</p> <p>5 MR. GOULDER: 'Cause I was just going to say,</p> <p>6 for completeness, you had mentioned some follow-up</p> <p>7 analysis on the construction exemption.</p> <p>8 THE WITNESS: Well, what we talked about,</p> <p>9 earlier, sure. In response to your question, earlier, I</p> <p>10 looked up, briefly, some of the caselaw that exists on</p> <p>11 the construction industry exemption.</p> <p>12 And, I guess, I can't rule out -- I mean, if</p> <p>13 you're asking me what I've even looked at in the course</p> <p>14 of -- I mean, I found these things that I cited, and I</p> <p>15 don't -- I may have looked at some things, in the course</p> <p>16 of finding these things, that I didn't cite that I just</p> <p>17 don't remember, but these are the topics that I was</p> <p>18 trying to support.</p> <p>19 BY MR. HENGVELD:</p> <p>20 Q And the documents that you have reviewed in preparation</p> <p>21 for providing your opinions, in this case, do you</p> <p>22 consider any particular document, or documents, more</p> <p>23 critical and relevant to the opinions than others?</p> <p>24 A Yes.</p> <p>25 Q What documents are those that you consider to be more</p>	<p style="text-align: right;">Page 80</p> <p>1 to do.</p> <p>2 (Marked for identification:</p> <p>3 Deposition Exhibit No. 57.)</p> <p>4 BY MR. HENGVELD:</p> <p>5 Q I'm handing you what's been marked as Exhibit 57, which</p> <p>6 is the report of Jordan Schreier.</p> <p>7 Can you answer the question now --</p> <p>8 A Thank you.</p> <p>9 Q -- with that report?</p> <p>10 A Sure. So I will -- so I disagree with the conclusion at</p> <p>11 the top of page 8, that Jaffe, Raitt's standard</p> <p>12 satisfied the standard of care, et cetera.</p> <p>13 I guess I'll just highlight the conclusions</p> <p>14 that I disagree with, rather than every specific</p> <p>15 subsection. I disagree with the conclusion on page 10,</p> <p>16 that Jaffe, Raitt did not represent SSL Assets.</p> <p>17 I disagree with the conclusion on page 11, in</p> <p>18 E -- I disagree with the conclusion on page 11, in E,</p> <p>19 that an employer that is aware of the potential for</p> <p>20 multiemployer pension plan withdrawal liability can make</p> <p>21 changes to its controlled group, potentially mitigating</p> <p>22 potential withdrawal liability.</p> <p>23 I disagree with that to the extent that it</p> <p>24 implies -- which I think it does -- that the employer</p> <p>25 can do that with any degree of intentionality, as</p>

ANDREW W. STUMPPFF
COHEN vs JAFFE

February 09, 2017
81-84

<p style="text-align: right;">Page 81</p> <p>1 opposed to an accidental side effect.</p> <p>2 I disagree -- I -- I have no opinion on the</p> <p>3 premature conclusion on page 12 in F. That's not within</p> <p>4 the scope of my opinions.</p> <p>5 Q Do you know how many hours you spent preparing for your</p> <p>6 deposition today?</p> <p>7 A I will guess eight.</p> <p>8 Q Are any of the publications that you have authored,</p> <p>9 during the last 10 years, related to controlled group</p> <p>10 liability?</p> <p>11 A It's discussed in two of the case books.</p> <p>12 Q Which are those?</p> <p>13 A Employee Benefits and Executive Compensation that came</p> <p>14 out in 2011. And then the one I'm a coauthor with</p> <p>15 Langbein and Pratt, which came out in 2015.</p> <p>16 And then let me just review the rest of the</p> <p>17 list to see if any of the others --</p> <p>18 (Witness reviewing document.)</p> <p>19 And I don't think any of the others were.</p> <p>20 Q Have the courses that you have taught at the</p> <p>21 University of Michigan, or the University of Alabama,</p> <p>22 involved ERISA topics, and, in particular, pension</p> <p>23 withdrawal liability, or controlled group liability?</p> <p>24 A All of the above, and, in particular, I typically issue</p> <p>25 a fairly detailed exercise on the brother-sister group.</p>	<p style="text-align: right;">Page 83</p> <p>1 A The same. Actually, I should amend that. I think at</p> <p>2 least one or two years, the one at Alabama has been</p> <p>3 titled "Deferred Compensation," but the content was the</p> <p>4 same.</p> <p>5 MR. HENGVELD: All right. I don't have any</p> <p>6 further questions. Thank you.</p> <p>7 THE WITNESS: Thank you.</p> <p>8 MR. GOULDER: The only thing I'll -- just to</p> <p>9 put on the record is we had exchanged e-mails, Jeff, as</p> <p>10 you recall, about whether Jaffee is obligated to</p> <p>11 compensate, you know, Mr. Stumpff, not only for his time</p> <p>12 here, but his time preparing.</p> <p>13 It is our view that the requirement is that</p> <p>14 they pay for the preparation time as well. We will</p> <p>15 submit a bill for both. You'll pay what you're going to</p> <p>16 pay, and if it's less than the full amount, we'll take</p> <p>17 it up with the judge at the appropriate time.</p> <p>18 MR. HENGVELD: And, for the record, yes, we</p> <p>19 did indicate that we would pay for the time for today's</p> <p>20 deposition, sitting in the deposition, and we are</p> <p>21 contesting that it is our obligation, under the federal</p> <p>22 court rules, to provide compensation for his prep time.</p> <p>23 THE WITNESS: So can I -- is this a good time</p> <p>24 to raise the rate?</p> <p>25 MR. GOULDER: Oh, go ahead.</p>
<p style="text-align: right;">Page 82</p> <p>1 Q You've described yourself as a lecturer at the</p> <p>2 University of Michigan --</p> <p>3 A Right.</p> <p>4 Q -- law school?</p> <p>5 A That's a title at U of M.</p> <p>6 Q How does that relate to a professor, or an associate</p> <p>7 professor, or assistant professor?</p> <p>8 A It's far below them. So it's -- my understanding is</p> <p>9 they have, you know, a whole hierarchy of professors,</p> <p>10 low professors, associate professors, et cetera.</p> <p>11 They have something they call an adjunct</p> <p>12 professor, and I'm not sure what -- I honestly don't</p> <p>13 know what the requisites are to be called an adjunct</p> <p>14 professor.</p> <p>15 And then they have a title called "lecturer,"</p> <p>16 and I think that's the function of their collective</p> <p>17 bargaining agreements.</p> <p>18 Q Are the courses that you provided at the University of</p> <p>19 Michigan for credit?</p> <p>20 A Yes.</p> <p>21 Q What was the title of that class, or classes, that</p> <p>22 you --</p> <p>23 A Employee Benefits and Executive Compensation.</p> <p>24 Q And what about the title of the classes at the</p> <p>25 University of Alabama?</p>	<p style="text-align: right;">Page 84</p> <p>1 THE WITNESS: So you handed me this exhibit,</p> <p>2 and I just realized that I -- I, or someone, has made a</p> <p>3 mistake. So this --</p> <p>4 MR. GOULDER: "This exhibit" being which?</p> <p>5 THE WITNESS: The engagement letter. So it</p> <p>6 recites a fee of \$450 an hour, and I said, in my report,</p> <p>7 that it's \$400 an hour, and I don't know which is</p> <p>8 mistaken. One of them is mistaken, but I just don't</p> <p>9 know --</p> <p>10 MR. HENGVELD: All right.</p> <p>11 THE WITNESS: -- as I sit here.</p> <p>12 I can find out.</p> <p>13 MR. GOULDER: The bills would show.</p> <p>14 THE WITNESS: That's true. The bills will</p> <p>15 show it.</p> <p>16 MR. HENGVELD: To be clear on the record,</p> <p>17 then, the invoice that I have, for September 2016,</p> <p>18 reflects a \$400-an-hour rate.</p> <p>19 THE WITNESS: That's what I thought.</p> <p>20 MR. HENGVELD: Is that the correct rate?</p> <p>21 THE WITNESS: That's the correct rate.</p> <p>22 MR. HENGVELD: Thank you.</p> <p>23 MR. GOULDER: Okay. We're finished.</p> <p>24 MR. HENGVELD: I have no further questions.</p> <p>25 MR. GOULDER: We'll read and sign the</p>

ANDREW W. STUMPPF
COHEN vs JAFFE

February 09, 2017
85-88

Page 85	Page 87
1 transcript.	1 DEPOSITION ERRATA SHEET
2 (The deposition was concluded at 10:28 a.m.)	2
3 (Signature reserved.)	3
4	4 Our Assignment No. J0510055
5	5 Case Caption: Cohen v Jaffee, et al.
6 * * *	6
7	7
8	8 DECLARATION UNDER PENALTY OF PERJURY
9	9
10	10 I declare under penalty of perjury that I have read the
11	11 entire transcript of my deposition taken in the captioned
12	12 matter or the same has been read to me, and the same is true
13	13 and accurate, save and except for changes and/or corrections,
14	14 if any, as indicated by me on the DEPOSITION ERRATA SHEET
15	15 hereof, with the understanding that I offer these changes as
16	16 if still under oath.
17	17
18	18 Signed on the _____ day of _____, 2017
19	19
20	20 _____
21	21 Andrew W. Stumpff
22	22
23	23
24	24
25	25

Page 86	Page 88
1 STATE OF MICHIGAN)	1 DEPOSITION ERRATA SHEET
2) SS	2
3 COUNTY OF MACOMB)	3 Page No. _____ Line No. _____ Change to: _____
4 CERTIFICATE OF NOTARY PUBLIC	4
5 I, Kelli A. Murphy, a Notary Public in and	5 Reason for change: _____
6 for the above county and state, do hereby certify that	6 Page No. _____ Line No. _____ Change to: _____
7 this transcript is a complete, true, and correct record	7
8 of the testimony of the witness held in this case.	8 Reason for change: _____
9 I also certify that prior to taking this	9 Page No. _____ Line No. _____ Change to: _____
10 deposition, the witness was duly sworn or affirmed to	10
11 tell the truth.	11 Reason for change: _____
12 I further certify that I am not a relative or	12 Page No. _____ Line No. _____ Change to: _____
13 an employee of or an attorney for a party; and that I am	13
14 not financially interested, directly or indirectly, in	14 Reason for change: _____
15 the matter.	15 Page No. _____ Line No. _____ Change to: _____
16 In witness whereof, I hereby set my	16
17 hand this day, Friday, February 17, 2017.	17 Reason for change: _____
18	18 Page No. _____ Line No. _____ Change to: _____
19	19
20	20 Reason for change: _____
21	21
22 Kelli A. Murphy, CSR-7768	22
23 Notary Public, Macomb County, Michigan	23 SIGNATURE: _____ DATE: _____
24 Signing in Wayne County, Michigan	24 Andrew W. Stumpff
25 My Commission expires: January 7, 2018	25

ANDREW W. STUMPPFF
COHEN vs JAFFE

February 09, 2017
89

Page 89	
1	DEPOSITION ERRATA SHEET
2	
3	Page No. _____ Line No. _____ Change to: _____
4	_____
5	Reason for change: _____
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18	Page No. _____ Line No. _____ Change to: _____
19	_____
20	Reason for change: _____
21	
22	
23	SIGNATURE: _____ DATE: _____
24	Andrew W. Stumpff
25	